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CONNECTED WITH THE

General Administration of the Law;

ARRANGED ACCORDING TO THE ORDER OF SUBJECTS:

WITH

NOTES,

BY SIR WILLIAM DAVID EVANS, KNT.

LATE RECORDER OF BOMBAY.

THE SECOND EDITION, CORRECTED;

COLLATED WITH THE ORIGINAL STATUTES,

AND CONTINUED TO THE

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CONTENTS

TO

VOL. II.

PART III.

Personal Property and Contracts.

CLASS I.

Patents, Literary Property, Property in Prints, Busts, and Patents of Manufactures.

[No. I.] 21 James I. c. 3.—An Act concerning Monopolies and Dispensations of Penal Laws, and the Forfeitures thereof..... p. 1

[No. II.] 8 Anne, c. 19.—An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned..... 10

[No. III.] 8 George II. c. 13.—An Act for the Encouragement of the Arts of Designing, Engraving and Etching Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned..... 27

[No. IV.] 12 George II. c. 36.—An Act for prohibiting the Importation of Books reprinted Abroad, and first composed or written and printed in *Great Britain*; and for repealing so much of an Act made in the Eighth Year of the Reign of her late Majesty Queen *Anne*, as empowers the limiting the Prices of Books..... 29

[No. V.] 7 George III. c. 38.—An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King *George* the Second, for Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints; and for vesting in and securing to *Jane Hogarth*, Widow, the Property in certain Prints..... 31

[No. VI.] 15 George III. c. 53.—An Act for enabling the two Universities in *England*, the four Universities in *Scotland*, and the several Colleges of *Eton*, *Westminster* and *Winchester*, to hold in Perpetuity their Copyright in Books, given or bequeathed to the said Universities and Colleges for the Advancement of useful Learning and other Purposes of Education; and for amending so much of an Act of the Eighth Year of the Reign of Queen *Anne*, as relates to the Delivery of Books to the Warehouse-keeper of the Stationers' Company, for the Use of the several Libraries therein mentioned..... 33

[No. VII.] 17 George III. c. 57.—An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases..... 35

[No. VIII.] 27 George III. c. 38.—An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Callicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors, for a limited Time..... 36

[No. IX.] 34 George III. c. 23.—An Act for amending and making perpetual an Act made in the Twenty-seventh Year of the Reign of his present Majesty, intituled *An Act for the Encouragement of the Arts of Designing and Printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Time.*—[*4th April* 1794.] 38

[No. X.] 38 George III. c. 71.—An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned.—[*21st June* 1798.] 39

[No. XI.] 41 George III. c. 107.—An Act for the further Encouragement of Learning, in the United Kingdom of *Great Britain* and *Ireland*, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns for the Time herein mentioned.—[*2d July* 1801.] 40

[No. XII.] 54 George III. c. 56.—An Act to amend and render more effectual an Act of his present Majesty, for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned; and for giving further Encouragement to such Arts.—[18*th May* 1814.] 44

[No. XIII.] 54 George III. c. 156.—An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns.—[29*th July* 1814.] .. 45

PART III. CLASS II.

Trade, Navigation, Ship-owners, Mariners, and Fisheries.

[No. I.] 38 Edward III. stat. 1. c. 8.—A Ship shall not be lost for a small Thing therein not customed 51

[No. II.] 12 Charles II. c. 18.—An Act for the Encouraging and Increasing of Shipping and Navigation ..... *ib.*

[No. III.] 13 & 14 Charles II. c. 11.—An Act for preventing Frauds, and regulating Abuses in his Majesty's Customs 57

[No. IV.] 15 Charles II. c. 7.—An Act for the Encouragement of Trade 58

[No. V.] 16 Charles II. c. 6.—An Act to prevent the delivering up of Merchant Ships.——*English* Ships not to be yielded up to Turks or Pirates. The Penalty on Masters of Ships, Process out of the Court of Admiralty, Mariners or inferior Officers declining to fight. The Penalty. Encouragement to Captains and Seamen to defend their Ships. Ships which shall be taken by the *English*. The Penalty of wilfully destroying Ships. The Continuance of this Act for Three Years, &c. 69

[No. VI.] 22 & 23 Charles II. c. 11.—An Act to prevent the Delivery up of Merchants Ships, and for the Increase of good and serviceable Shipping..... *ib.*

[No. VII.] 7 & 8 William III. c. 22.—An Act for preventing Frauds, and regulating Abuses in the Plantation Trade..... 71

[No. VIII.] 12 Anne, st. 2. c. 18.—An Act for the preserving all such Ships and Goods thereof, which shall happen to be forced on shore, or stranded, upon the Coasts of this Kingdom, or any other of her Majesty's Dominions..... 72

[No. IX.] 4 George I. c. 12.—An Act for enforcing and making perpetual an Act of the Twelfth Year of her late Majesty, intituled *An Act for the preserving of all such Ships and Goods thereof, which shall happen to be forced on Shore, or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions;* and for inflicting the Punishment of Death on such as shall wilfully burn or destroy Ships..... 76

[No. X.] 2 Geo. II. c. 36.—An Act for the better Regulation and Government of Seamen in the Merchants Service..... 77

[No. XI.] 7 George II. c. 15.—An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners..... 80

[No. XII.] 20 George II. c. 38.—An Act for the Relief and Support of maimed and disabled Seamen, and the Widows and Children of such as shall be killed, slain or drowned in the Merchants Service..... 81

[No. XIII.] 26 George II. c. 19.—An Act for enforcing the Laws against Persons who shall steal or detain shipwrecked Goods; and for the Relief of Persons suffering Losses thereby ..... *ib.*

[No. XIV.] 13 George III. c. 26.—An Act for preventing Abuses in the Sale of Shares of *British*-built Ships to Foreigners 86

[No. XV.] 21 Geo. III. c. 39.—An Act for further securing the Property of the Owners in such Ships or Vessels as are liable to Forfeiture for importing Spirits or other Goods, by the Misconduct of the Masters, Mates and Seamen..... *ib.*

[No. XVI.] 22 George III. c. 25.—An Act to prohibit the ransoming of Ships or Vessels captured from his Majesty's Subjects, and of the Merchandize or Goods on board such Ships or Vessels 88

[No. XVII.] 26 George III. c. 60.—An Act for the further Increase and Encouragement of Shipping and Navigation 89

[No. XVII. *a.*] 26 George III. c. 86.—An Act to explain and amend an Act, made

in the Seventh Year of his late Majesty's Reign, intituled *An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners*; and for giving a further Relief to the Owners of Ships..... 98

[No. XVIII.] 27 George III. c. 19.—An Act to enforce and render more effectual several Acts passed in the Twelfth Year of the Reign of King *Charles* the Second, and other Acts made for the Increase and Encouragement of Shipping and Navigation..... 100

[No. XIX.] 31 George III. c. 39.—An Act for the better Regulation and Government of Seamen employed in the Coasting Trade of this Kingdom..... 101

[No. XX.] 34 George III. c. 68.—An Act for the further Encouragement of *British* Mariners; and for other Purposes therein mentioned.—[11*th June* 1794.]..... 104

[No. XXI.] 37 George III. c. 63.—An Act for granting to Foreign Ships put under his Majesty's Protection the Privileges of Prize Ships, under certain Regulations and Restrictions; and for allowing Aliens in Foreign Colonies surrendered to his Majesty to exercise the Occupations of Merchants or Factors.—[25*th May* 1797.]..... 116

[No. XXII.] 37 George III. c. 73.—An Act for preventing the Desertion of Seamen from *British* Merchant Ships trading to his Majesty's Colonies and Plantations in the *West Indies*.—[6*th June* 1797.]..... 117

[No. XXIII.] 43 George III. c. 56.—An Act for regulating the Vessels carrying Passengers from the United Kingdom to his Majesty's Plantations and Settlements abroad, or to Foreign Parts, with respect to the Number of such Passengers.—[24*th June* 1803.]..... 122

[No. XXIV.] 45 George III. c. 81.—An Act to amend an Act in the Thirty-first Year of his present Majesty, for the better Regulation and Government of Seamen employed in the Coasting Trade.—[2*d July* 1805.]..... *ib.*

[No. XXV.] 48 George III. c. 130.—An Act for preventing the various Frauds and Depredations committed on Merchants, Ship-owners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain Defects relative to the Adjustment of Salvage, under a Statute made in the Twelfth Year of the Reign of her late Majesty Queen *Anne*.—[30*th June* 1808.]..... 123

[No. XXVI.] 49 George III. c. 122.—An Act for preventing Frauds and Depredations committed on Merchants, Ship-owners, and Underwriters, by Boatmen and others; and also for remedying certain Defects relative to the Adjustment of Salvage in *England*, under an Act made in the Twelfth Year of Queen *Anne*,—[20*th June* 1809.]..... 124

[No. XXVII.] 52 George III. c. 39.—An Act for the more effectual Regulations of Pilots, and of the Pilotage of Ships and Vessels on the Coast of *England*.—[20*th April* 1812.]..... 131

[No. XXVIII.] 53 George III. c. 36.—An Act to amend an Act, passed in the Forty-third Year of his present Majesty, for regulating the Vessels carrying Passengers to his Majesty's Plantations and Settlements Abroad.—[15*th April* 1813.]..... 133

[No. XXIX.] 53 George III. c. 111.—An Act for the more easy manning of Ships and Vessels employed in the *Southern* Whale Fishery.—[10*th July* 1813.]..... *ib.*

[No. XXX.] 53 George III. c. 159.—An Act to limit the Responsibility of Ship Owners, in certain Cases.—[21*st July* 1813.]..... *ib.*

[No. XXX. *a.*] 54 George III. c. 59.—An Act to allow Ships taken and condemned for being used in carrying on the Slave Trade to be registered as *British*-built Ships.—[27*th May* 1814.]..... 138

[No. XXXI.] 54 George III. c. 158.—An Act to continue, for One Year, certain Acts for the better Prevention and Punishment of Attempts to seduce Persons serving in his Majesty's Forces by Sea or Land from their Duty and Allegiance to his Majesty, or to incite them to Mutiny or Disobedience.—[29*th July* 1814.]..... *ib.*

[No. XXXII.] 54 George III. c. 159.—An Act for the better Regulation of the several Ports, Harbours, Roadsteads, Sounds, Channels, Bays, and Navigable Rivers, in the United Kingdom; and of his Majesty's Docks, Dock Yards, Arsenals, Wharfs, Moorings, and Stores therein; and for repealing several Acts passed for that Purpose.—[29*th July* 1814.]..... *ib.*

[No. XXXII. *a.*] 54 George III. c. 171.—An Act to empower the Commissioners of his Majesty's Treasury to restore Seizures; or remit or mitigate Fines, Pe-

nalties, or Forfeitures, incurred concerning any Laws relating to the Customs or Excise, or Navigation and Trade of *Great Britain*.—[30*th July* 1814.]..148

[No. XXXIII.] 55 George III. c. 116.—An Act to make further Regulations for the Registry of Ships built in *India*.—[28*th June* 1815.].....149

[No. XXXIV.] 58 George III. c. 7.—An Act to Indemnify all Persons who have been concerned in advising or carrying into Execution any Order or Orders for permitting the Importation and Exportation of certain Goods and Commodities in Foreign Bottoms into and out of certain of his Majesty's *West India* Islands.—[17*th March* 1818.] ..... *ib.*

[No. XXXV.] 58 George III. c. 15.—An Act to amend an Act made in the Twenty-sixth Year of his present Majesty, for the Encouragement of the Fisheries carried on in the *Greenland* Seas and *Davis's Streights*, so far as relates to the Oaths thereby required to be taken.—[19*th March* 1818.]..... *ib.*

[No. XXXVI.] 58 George III. c. 19.—An Act to allow for Three Years, and until Six Weeks after the Commencement of the then next Session of Parliament, the Importation into Ports specially appointed by his Majesty, within the Provinces of *Nova Scotia* and *New Brunswick*, of the Articles therein enumerated, and the Re-exportation thereof from such Ports.—[8*th May* 1818.].. 150

[No. XXXVII.] 58 George III. c. 20.—An Act for more effectually discovering the Longitude at Sea, and encouraging Attempts to find a Northern Passage between the *Atlantic* and *Pacific* Oceans, and to approach the Northern Pole.—[8*th May* 1818.] ..... *ib.*

[No. XXXVIII.] 58 George III. c. 26.—An Act to continue until the Fifth Day of *July* 1819, Two Acts made in the Fifty-fourth and Fifty-sixth Years of his present Majesty's Reign, for Regulating the Trade in Spirits between *Great Britain* and *Ireland* reciprocally, and to amend the same.—[23*d May* 1818.] *ib.*

[No. XXXIX.] 58 George III. c. 27.—An Act to permit the Importation of certain Articles into his Majesty's Colonies or Plantations in the *West Indies*, or on the Continent of *South America*, and also certain Articles into certain Ports in the *West Indies*.—[23*d May* 1818.] ..... *ib.*

[No. XL.] 58 George III. c. 34.—An Act to repeal the several Bounties on the Exportation of Refined Sugar from any Part of the United Kingdom, and to allow other Bounties in lieu thereof, until the Fifth Day of *July* One Thousand Eight Hundred and Twenty, and for reducing the Size of the Packages in which Refined Sugar may be exported.—[23*d May* 1818.]..... *ib.*

[No. XLI.] 58 George III. c. 38.—An Act to extend and render more effectual the present Regulations for the Relief of Seafaring Men and Boys, Subjects of the United Kingdom of *Great Britain* and *Ireland*, in Foreign Parts.—[28*th May* 1818.]..... *ib.*

[No. XLII.] 58 George III. c. 56.—An Act to make perpetual an Act of the Forty-sixth Year of his present Majesty, for granting an additional Bounty on the Exportation of the Silk Manufactures of *Great Britain*.—[1*st June* 1818.] 152

[No. XLIII.] 58 George III. c. 61.—An Act for the better accommodating of his Majesty's Packets within the Harbour on the North Side of the Hill of *Howth*, and for the better Regulation of the Shipping therein.—[1*st June* 1818.] *ib.*

[No. XLIV.] 58 George III. c. 62.—An Act to continue until the First Day of *August* One Thousand Eight Hundred and Nineteen, Two Acts of his present Majesty, allowing the bringing of Coals, Culm and Cinders to *London* and *Westminster*.—[1*st June* 1818.] 153

[No. XLV.] 58 George III. c. 63.—An Act to revive and continue until the Twenty-fifth Day of *March* One Thousand Eight Hundred and Nineteen an Act made in the Forty-ninth Year of his present Majesty, to permit the Importation of Tobacco from any place whatever.—[3*d June* 1818.] ..... *ib.*

[No. XLVI.] 58 George III. c. 72.—An Act for Improving and Completing the Harbour of *Dunmore*, in the County of *Waterford*, and rendering it a fit Situation for his Majesty's Packets.—[3*d June* 1818.]..... *ib.*

[No. XLVII.] 58 George III. c. 76.—An Act to subject Foreigners to Arrest and Detention for Smuggling within certain Distances of any of the Dominions of his Majesty; for regulating Rewards to the seizing Officers, according to the Tonnage of Vessels or Boats seized and condemned; and for the further Prevention of the Importation of Tea, without making due Entry thereof with the Officers of Customs and Excise.—[5*th June* 1818.] ..... *ib.*

[No. XLVIII.] 58 George III. c. 83.—An Act to amend and reduce into one Act

the several Laws relating to the Manner in which the *East India* Company are required to hire Ships.—[5*th June* 1818.] 153

[No. XLIX.] 58 George III. c. 89.—An Act to repeal so much of an Act passed in the Forty-third Year of his present Majesty, as requires the Attendance of Magistrates on board Vessels carrying Passengers from the United Kingdom to his Majesty's Plantations or to Foreign Parts.—[5*th June* 1818.] ..... *ib.*

[No. L.] 58 George III. c. 94.—An Act to continue, until the Twenty-ninth Day of *September* One Thousand Eight Hundred and Nineteen, and to amend an Act passed in *Ireland* in the Thirty-sixth Year of his present Majesty, for the Improvement and Extension of the Fisheries on the Coasts of *Ireland*.—[10*th June* 1818.] ..... *ib.*

[No. LI.] 57 George III. c. 5.—An Act to ascertain the Tonnage of Vessels propelled by Steam.—[23*d March* 1819.] 154

[No. LII.] 59 George III. c. 6.—An Act to enable his Majesty to direct the Distribution of any Reward awarded by the Commissioners of the Customs or Excise, to the Officers of the Army, Navy, or Marines, for apprehending Smugglers, in such Manner as his Majesty shall be pleased to appoint.—[23*d March* 1819.] ..... *ib.*

[No. LIII.] 59 George III. c. 7.—An Act to regulate the Cutlery Trade in *England*.—[23*d March* 1819.] ..... *ib.*

[No. LIV.] 59 George III. c. 14.—An Act to continue until First of *July* One Thousand Eight Hundred and Twenty-three an Act of the Forty-sixth of his present Majesty, for permitting the Exportation of Wool from the *British* Plantations in *America*.—[31*st March* 1819.] ..... *ib.*

[No. LV.] 59 George III. c. 18.—An Act to make perpetual an Act of the Forty-fourth Year of his present Majesty, for permitting the Exportation of Salt from the Port of *Nassau* in the Island of *New Providence*, the Port of *Exuma*, and the Port of *Crooked Island* in the *Bahama Islands*, in *American* Ships coming in Ballast.—[31*st March* 1819.] ..... *ib.*

[No. LVI.] 59 George III. c. 25.—An Act to enable his Majesty to fix the Rate and direct the Disposal of Freight Money, for the Conveyance of Specie and Jewels on board his Majesty's Ships and Vessels.—[8*th April* 1819.] ..... *ib.*

[No. LVII.] 59 George III. c. 38.—An Act to enable his Majesty to make Regulations with respect to the Taking and Curing Fish on certain parts of the Coasts of *Newfoundland*, *Labrador*, and his Majesty's other Possessions in *North America*, according to a Convention made between his Majesty and the United States of *America*.—[14*th June* 1819.] ..... *ib.*

[No. LVIII.] 59 George III. c. 55.—An Act to extend the Provisions of Three Acts of the Fifty-second, Fifty-third, and Fifty-seventh Years of his present Majesty, for allowing *British* Plantation Sugar and Coffee, and other Articles, imported into *Bermuda* in *British* Ships, to be exported to *America* in Foreign Vessels, and to permit Articles, the Produce of *America*, to be imported into *Bermuda* in Foreign Ships, to certain other Articles.—[2*d July* 1819.] ..... *ib.*

[No. LIX.] 59 George III. c. 58.—An Act for facilitating the Recovery of the Wages of Seamen in the Merchant Service.—[2*d July* 1819.] 155

[No. LX.] 59 George III. c. 59.—An Act to extend the Provisions of an Act made in the Fifty-fifth Year of his present Majesty, for the Payment of Wages due to deceased Seamen and Marines, to Wages due to Intestate Bastards.—[2*d July* 1819.] 158

[No. LXI.] 59 George III. c. 73.—An Act to repeal several Acts, requiring the Masters of Vessels carrying certificated Goods to *Ireland* to take Duplicates of the Contents; prohibiting the Importation of certain wrought Goods, and the Exportation of Gunpowder, when the Price shall exceed a certain Sum.—[6*th July* 1819.] ..... *ib.*

[No. LXII.] 59 George III. c. 74.—An Act to allow the Importation of Tobacco from the *East Indies* and other Places; and for confining the Exportation of Tobacco from *Great Britain*, and the Importation thereof into *Ireland*, to Vessels of Seventy Tons Burthen and upwards.—[6*th July* 1819.] ..... *ib.*

[No. LXIII.] 59 George III. c. 75.—An Act to continue until Fifth of *July* One Thousand Eight Hundred and Twenty, Two Acts made in the Fifty-fourth and Fifty-sixth Years of his present Majesty for regulating the Trade in Spirits between *Great Britain* and *Ireland* reciprocally —[6*th July* 1819.] 159

[No. LXIV.] 59 George III. c. 77.—An Act to continue until the Twenty-fourth of *June* One Thousand Eight Hundred and Twenty-six an Act for amending the

Laws relating to the Allowance of the Bounties on Pilchards exported.—[6th *July* 1819.] 159

[No. LXV.] 59 George III. c. 79.—An Act to continue until the First of *August* One Thousand Eight Hundred and Twenty, Two Acts of the Forty-fifth and Fiftieth Years of his present Majesty, allowing the bringing of Coals, Culm and Cinders to *London* and *Westminster* by Inland Navigation.—[6th *July* 1819.] *ib.*

[No. LXVI.] 59 George III. c. 98.—An Act to limit the Continuance of the several Acts for imposing Fines upon Townlands and Places in *Ireland*, in respect of Offences relating to the unlawful Distillation of Spirits; and to amend the said Acts, and to provide for the more effectual Prevention or Suppression of such Offences.—[12th *July* 1819.] ..... *ib.*

[No. LXVII.] 59 George III. c. 103.—An Act to repeal so much of Two Acts as require certain Accounts to be laid before Parliament; and to amend an Act of the Twenty-sixth Year of his present Majesty, relative to laying an Account before Parliament.—[12th *July* 1819.] ..... *ib.*

[No. LXVIII.] 59 George III. c. 107.—An Act to consolidate and amend several Acts for regulating the granting of Permits and Certificates for the Conveyance and Protection of certain Goods in *Ireland*.—[12th *July* 1819.] ..... *ib.*

[No. LXIX.] 59 George III. c. 108.—An Act to amend several Acts relating to the Post Office and Conveyance of Letters in *Ireland*.—[12th *July* 1819.] .. *ib.*

[No. LXX.] 59 George III. c. 109.—An Act for the further Encouragement and Improvement of the *Irish* Fisheries.—[12th *July* 1819.] ..... *ib.*

[No. LXXI.] 59 George III. c. 110.—An Act to remove Doubts respecting the Dues payable to the Levant Company.—[12th *July* 1819.] 160

[No. LXXII.] 59 George III. c. 112.—An Act to grant, until the Fifth of *July* One Thousand Eight Hundred and Twenty-one an additional Bounty on the Exportation of certain Silk Manufactures of *Great Britain*.—[12th *July* 1819.] *ib.*

[No. LXXIII.] 59 George III. c. 113.—An Act for continuing the Premiums allowed to Ships employed in the Southern Whale Fishery.—[12th *July* 1819.] *ib.*

[No. LXXIV.] 59 George III. c. 121.—An Act to make further Regulations for the Prevention of Smuggling.—[12th *July* 1819.] ..... *ib.*

[No. LXXV.] 59 George III. c. 122.—An Act to permit Vessels under a certain Tonnage to trade between the United Kingdom and *New South Wales*.—[12th *July* 1819.] ..... *ib.*

[No. LXXVI.] 59 George III. c. 123.—An Act to empower the Officers of the Customs in *Great Britain* to allow Reports of Vessels' Cargoes to be amended; to require Goods which have been warehoused without Payment of Duties, or being prohibited warehoused for Exportation, to be put on board Vessels by Persons licensed for that Purpose; to direct that Cocquet and Bond shall be required for Slate and Stone carried Coastwise; and to empower Officers of the Customs to administer Oaths.—[12th *July* 1819.] ..... *ib.*

[No. LXXVII.] 59 George III. c. 124.—An Act for amending an Act made in the Forty-third Year of the Reign of his present Majesty, for regulating the Vessels carrying Passengers from the United Kingdom to his Majesty's Plantations and Settlements Abroad, or to Foreign Parts, with respect to the Number of such Passengers, and for making further Provision for that Purpose.—[12th *July* 1819.] ..... *ib.*

[No. LXXVIII.] 59 George III. c. 125.—An Act to admit certain Goods imported from the *East Indies* to Entry and Payment of Duty without being warehoused, and to permit the Exportation of certain *East India* Goods to *Guernsey* and *Jersey*, and the Removal of certain *East India* Goods to *Liverpool*, *Lancaster*, *Bristol*, and *Glasgow*, for Exportation.—[12th *July* 1819.] ..... *ib.*

[No. LXXIX.] 59 George III. c. 126.—An Act for requiring the like Proof, to obtain Drawback of Duty on Coals used or consumed in calcining or smelting Tin, Copper or Lead Ores, in the Counties of *Devon* and *Cornwall*, as is required on Coals used in Mines of Tin, Copper, or Lead, in the said Counties.—[12th *July* 1819.] 161

[No. LXXX.] 1 George IV. c. 8.—An Act to allow a Drawback on Goods, Wares, and Merchandize imported into any *British* Colony or Plantation in *America*, on the Exportation thereof to any Foreign Country to which they may be legally exported.—[22d *June* 1820.] ..... *ib.*

[No. LXXXI.] 1 Geo. IV. c. 9.—An Act for granting the Privileges of *British* Ships to Vessels built at *Malta*, *Gibraltar*, and *Heligoland*, and certain of

those Privileges to Vessels built in the *British* Settlements at *Honduras*.—[22*d June* 1820.] 161

[No. LXXXII.] 1 George IV. c. 11.—An Act to continue until the Fifth of *July* One Thousand Eight Hundred and Twenty-five an Act of the Fifty-seventh Year of his late Majesty, for regulating the Trade and Commerce to and from the *Cape of Good Hope*, and for regulating the Trade of the *Island of Mauritius*.—[22*d June* 1820.] 162

[No. LXXXIII.] 1 George IV. c. 12.—An Act to extend several Acts for allowing the Importation and Exportation of certain Goods and Merchandise to *Morant Bay* in the Island of *Jamaica*.—[22*d June* 1820.] ..... *ib.*

[No. LXXXIV.] 1 George IV. c. 14.—An Act to repeal the Drawback on certain Gold Articles exported; and to permit the Exportation of Cordage entitled to Bounty, free from Right of Pre-emption by the Commissioners of the Navy.—[22*d June* 1820.] ..... *ib.*

[No. LXXXV.] 1 George IV. c. 15.—An Act to continue until the Twenty-fifth of *July* One Thousand Eight Hundred and Twenty-one an Act of the Twenty-eighth of his late Majesty, for the more effectual Encouragement of the Manufacture of Flax and Cotton in *Great Britain*.—[22*d June* 1820.] 163

[No. LXXXVI.] 1 George IV. c. 25.—An Act to repeal part of an Act made in the Ninth Year of the Reign of his late Majesty King *George* the Second, relative to the Manufacture of Sail Cloth.—[30*th June* 1820.] ..... *ib.*

[No. LXXXVII.] 1 George IV. c. 26.—An Act for the Encouragement and Improvement of the Coasting Trade in *Ireland*.—[30*th June* 1820.] ..... *ib.*

[No. LXXXVIII.] 1 George IV. c. 32.—An Act to permit the Importation of Coffee from any Foreign Colony or Plantation in *America* into the Port of *Bridgetown* in *Barbadoes*.—[8*th July* 1820.] ..... *ib.*

[No. LXXXIX.] 1 George IV. c. 33.—An Act to amend and continue until the Thirty-first of *December* One Thousand Eight Hundred and Twenty-three several Laws relating to the Encouragement of the *Greenland* Whale Fisheries, to the allowing Vessels employed in the said Fisheries to complete their full Number of Men at certain Ports.—[8*th July* 1820.] ..... *ib.*

[No. XC.] 1 George IV. c. 34.—An Act for further continuing until the First of *January* One Thousand Eight Hundred and Twenty-six so much of an Act passed in the Fifty-sixth of his late Majesty as permits Subjects of his Majesty the King of the *Netherlands* to import and export certain Articles into and from the Colonies of *Demarara*, *Berbice*, and *Essequibo*, in Ships not of the Built of the Dominions of his said Majesty.—[8*th July* 1820.] ..... *ib.*

[No. XCI.] 1 George IV. c. 39.—An Act for the Assistance of Trade and Manufactures in *Ireland*, by authorising the Advance of certain Sums for the Support of Commercial Credit there.—[8*th July* 1820.] ..... *ib.*

[No. XCII.] 1 George IV. c. 43.—An Act to amend the Laws relating to Smuggling and the Coasting Trade in *Great Britain*.—[15*th July* 1820.] ..... *ib.*

[No. XCIII.] 1 George IV. c. 52.—An Act to continue until the Twenty-fifth of *March* One Thousand Eight Hundred and Twenty-one an Act made in the Forty-sixth Year of his late Majesty for permitting the Importation of Masts, Yards, Bowsprits and Timber fit for Naval Purposes, from the *British* Colonies in *North America*.—[15*th July* 1820.] 164

[No. XCIV.] 1 George IV. c. 53.—An Act to continue until the Twenty-fifth of *March* One Thousand Eight Hundred and Twenty-one so much of an Act of the Fifty-ninth Year of his late Majesty, as allows *Santa Maria* Wood and *Teake* Wood to be Imported free of Duty.—[15*th July* 1820.] ..... *ib.*

[No. XCV.] 1 George IV. c. 54.—An Act to continue until the First of *August* One Thousand Eight Hundred and Twenty-five Two Acts of the Forty-fifth and Fiftieth Years of his late Majesty, allowing the bringing of Coals, Culm and Cinders to *London* and *Westminster*, by inland Navigation.—[15*th July* 1820.] *ib.*

[No. XCVI.] 1 George IV. c. 59.—An Act to amend, revive, and continue until the Twenty-fifth of *March* One Thousand Eight Hundred and Twenty-five an Act of the Fifty-second Year of his late Majesty, for regulating the Separation of damaged from sound Coffee, and for permitting Dealers to send out any quantity of Coffee, not exceeding Eight Pounds weight, without Permit.—[15*th July* 1820.] ..... *ib.*

[No. XCVII.] 1 George IV. c. 64.—An Act to continue until the Fifth of *July* One Thousand Eight Hundred and Twenty-four an Act made in the Fifty-eighth Year of his late Majesty, to repeal the several Bounties on the Exportation of

Refined Sugar from the United Kingdom, and to allow other Bounties in lieu thereof, and to reduce the Size of the Packages in which Refined Sugar may be exported.—[15*th July* 1820.] 164

[No. XCVIII.] 1 George IV. c. 67.—An Act to continue until the First of *August* One Thousand Eight Hundred and Twenty-two the low Duties on Coals and Culm carried Coastwise to any Port within the Principality of *Wales*.—[15*th July* 1820.] ..... *ib.*

[No. XCIX.] 1 George IV. c. 69.—An Act to alter and amend an Act passed in the Fifty-sixth Year of his late Majesty for erecting a Harbour for Ships to the Eastward of *Dunleary*, within the Port of *Dublin*; and to provide for the Erection of a Western Pier to the said Harbour of *Dunleary*.—[15*th July* 1820.] 165

[No. C.] 1 George IV. c. 76.—An Act to repeal so much of an Act of the Fifty-seventh Year of his late Majesty as prohibits the Sale in *England* of any Spirits not being Spirits of Wine, *British* Brandy, *British* Gin, or Compounds.—[24*th July* 1820.] ..... *ib.*

[No. CI.] 1 George IV. c. 80.—An Act allowing Importers of Sugar in *Ireland* to give Certificates for Sugar sold by them in lieu of Permits.—[24*th July* 1820.] ..... *ib.*

[No. CII.] 1 George IV. c. 82.—An Act to amend an Act of the Fifty-ninth Year of the Reign of his late Majesty King *George* the Third for the Encouragement and Improvement of the *Irish* Fisheries.—[24*th July* 1820.] ..... *ib.*

[No. CIII.] 1 George IV. c. 103.—An Act for the further Encouragement and Improvement of the *British* Fisheries.—[24*th July* 1820.] ..... *ib.*

[No. CIV.] 1 George IV. c. 112.—An Act for Improving and Completing the Harbour of *Port Patrick* in *Scotland*, so as to render the same a more fit Situation for his Majesty's Packets.—[24*th July* 1820.] ..... *ib.*

[No. CV.] 1 George IV. c. 113.—An Act for granting a certain Sum of Money towards Improving the Harbour of *Donaghadee* in *Ireland*, and rendering it a more fit Situation for his Majesty's Packets.—[24*th July* 1820.] ..... *ib.*

[No. CVI.] 1 & 2 George IV. c. 49.—An Act for making further Regulations in respect to the Payment by Remittance Bill of the Wages of Petty Officers, Seamen, and Marines, in the Royal Navy; and for extending the Provisions of an Act made in the Fifty-fifth Year of his late Majesty, relating to the Execution of Letters of Attorney and Wills of Petty Officers, Seamen, and Marines, in his Majesty's Navy.—[8*th June* 1821.] ..... *ib.*

[No. CVII.] 1 & 2 George IV. c. 75.—An Act to continue and amend certain Acts for preventing Frauds and Depredations committed on Merchants, Ship-owners and Underwriters, by Boatmen and others; and also for remedying certain Defects relative to the Adjustment of Salvage in *England*, under an Act made in the Twelfth Year of Queen *Anne*.—[2*d July* 1821.] 168

[No. CVIII.] 1 & 2 Geo. IV. c. 76.—An Act to continue and amend certain Acts for preventing the various Frauds and Depredations committed on Merchants, Ship-owners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain Defects relative to the Adjustment of Salvage, under a Statute made in the Twelfth year of the Reign of her late Majesty Queen *Anne*.—[2*d July* 1821.] 181

[No. CIX.] 1 & 2 Geo. IV. c. 99.—An Act for the Appropriation of certain Proceeds arising from the Capture of Vessels and Cargoes, the Property of the Subjects of the Kings of *Spain*, *Portugal*, and the *Netherlands*, taken and seized in violation of the Conventions made with those States, and for granting Bounties upon Slaves captured in such Vessels, and also for granting Indemnity to the Captors of certain Vessels taken in the Prosecution of the Slave Trade.—[10*th July* 1821.] 189

[No. 1. *Addenda*] 3 George IV. c. 41.—An Act to repeal divers ancient Statutes and Parts of Statutes, so far as they relate to the Importation and Exportation of Goods and Merchandize from and to Foreign Countries.—[24*th June* 1822.] 369

[No. CX.] 3 Geo. IV. c. 42.—An Act to repeal certain Acts and Parts of Acts relating to the Importation of Goods and Merchandize.—[24*th June* 1822.] ... 190

[No. CXI.] 3 George IV. c. 43.—An Act for the Encouragement of Navigation and Commerce, by regulating the Importation of Goods and Merchandize, so far as relates to the Countries or Places from whence and the Ships in which such Importation shall be made.—[24*th June* 1822.] 196

[No. CXII.] 3 George IV. c. 44.—An Act to regulate the Trade between his Majesty's Possessions in *America* and the *West Indies* and other Places in *America* and the *West Indies*.—[24*th June* 1822.] 204

[No. CXIII.] 3 Geo. IV. c. 45.—An Act to regulate the Trade between his Majesty's Possessions in *America* and the *West Indies*, and other Parts of the World.—[24*th June* 1822.] 214

[No. II. *Addenda*.] 3 Geo. IV. c. 110.—An Act to amend the Laws for the Prevention of Smuggling.—[5*th August* 1822.] 395

PART III. CLASS III.

Insurance.

[No. I.] 43 Elizabeth, c. 12.—An Act concerning Matters of Assurances used among Merchants 222

[No. II.] 13 & 14 Charles II. c. 23.—An additional Act concerning Matter of Assurance used amongst Merchants 223

[No. III.] 6 George I. c. 18.—An Act for better securing certain Powers and Privileges intended to be granted by his Majesty by two Charters for Assurance of Ships and Merchandizes at Sea, and for lending Money upon Bottomry; and for restraining several extravagant and unwarrantable Practices therein mentioned 227

[No. IV.] 11 George I. c. 30.—An Act for more effectual preventing Frauds and Abuses in the Public Revenues; for preventing Frauds in the Salt Duties, and and for giving Relief for Salt used in the curing of Salmon and Codfish, in the year One Thousand Seven Hundred and Nineteen, exported from that Part of *Great Britain* called *Scotland*; for enabling the Insurance Companies to plead the General Issue in Actions brought against them; and for securing the Stamp Duties upon Policies of Insurance 238

[No. V.] 19 George II. c. 37.—An Act to regulate Insurance on Ships belonging to the Subjects of *Great Britain*, and on Merchandizes or Effects laden thereon. 239

[No. VI.] 14 George III. c. 48.—An Act for regulating Insurances upon Lives, and for prohibiting all such Insurances, except in Cases where the Persons insuring shall have an Interest in the Life or Death of the Persons insured 246

[No. VII.] 25 George III. c. 44.—An Act for regulating Insurances on Ships, and on Goods, Merchandizes or Effects 247

[No. VIII.] 28 George III. c. 56.—An Act to repeal an Act, made in the Twenty-fifth Year of the Reign of his present Majesty, intituled, *An Act for regulating Insurances on Ships, and on Goods, Merchandizes, or Effects*; and for substituting other Provisions, for the like Purpose, in lieu thereof 248

PART III. CLASS IV.

Bills of Exchange and Promissory Notes.

[No. I.] 9 & 10 William III. c. 17.—An Act for the Payment of Inland Bills of Exchange 250

[No. II.] 3 & 4 Anne, c. 9.—An Act for giving like Remedy upon Promissory Notes, as is now used upon Bills of Exchange, and for the better Payment of Inland Bills of Exchange 254

[No. III.] 17 Geo. III. c. 30.—An Act for further restraining the Negociation of Promissory Notes, and Inland Bills of Exchange, under a limited Sum, within that Part of *Great Britain* called *England* 256

[No. IV.] 39 & 40 George III. c. 42.—An Act for the better Observance of *Good Friday* in certain Cases therein mentioned.—[16*th May* 1800.] 259

[No. V.] 48 George III. c. 88.—An Act to restrain the Negociation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, in *England*.—[23*d June* 1808.] ..... *ib.*

[No. VI.] 58 Geo. III. c. 93.—An Act to afford Relief to the *bona fide* Holders of negotiable Securities, without Notice that they were given for a Usurious Consideration.—[*10th June* 1818.] 262

[No. VII.] 1 & 2 Geo. IV. c. 78.—An Act to regulate Acceptances of Bills of Exchange.—[*2d July* 1821.] 263

[No. I. *Addenda.*] 3 George IV. c. 70.—An Act to continue, until the Fifth Day of *January* One Thousand Eight Hundred and Thirty-three, an Act of the Thirty-seventh Year of his late Majesty, for suspending the Operation of an Act of the Seventeenth Year of his late Majesty for restraining the Negociation of Promissory Notes and Bills of Exchange, under a limited Sum in *England*.—[*22d July* 1822.] 400

PART III. CLASS V.

Usury.

[No. I.] 37 Henry VIII. c. 9.—A Bill against Usury 264

[No. II.] 13 Elizabeth, c. 8.—An Act against Usury 283

[No. III.] 21 James I. c. 17.—An Act against Usury 285

[No. IV.] 12 Charles II. c. 13.—An Act for the restraining the taking of excessive Usury 286

[No. V.] 12 Anne, st. 2. c. 16.—An Act to reduce the Rate of Interest, without any prejudice to Parliamentary Securities 287

[No. VI.] 14 George III. c. 79.—An Act for explaining an Act made in the Twelfth Year of the Reign of Queen *Anne*, intituled, *An Act to reduce the Rate of Interest, without any Prejudice to Parliamentary Securities* 288

[No. VII.] 1 & 2 Geo. IV. c. 51.—An Act to explain an Act made in the Fourteenth Year of his late Majesty King *George* the Third, for explaining an Act made in the Twelfth Year of Queen *Anne*, intituled, *An Act to reduce the Rate of Interest, without any Prejudice to Parliamentary Securities*.—[*15th June* 1821.] 290

[No. I. *Addenda.*] 3 Geo. IV. c. 47.—An Act to repeal an Act of his present Majesty, for explaining an Act made in Twelfth Year of Queen *Anne*, to reduce the Rate of Interest without Prejudice to Parliamentary Securities, and to substitute other Provisions in lieu thereof.—[*24th June* 1822.] 401

PART III. CLASS VI.

Annuities.

[No. I.] 17 George III. c. 26.—An Act for registering the Grants of Life Annuities; and for the better Protection of Infants against such Grants 293

[No. II.] 53 George III. c. 141.—An Act to repeal an Act of the Seventeenth Year of the Reign of his present Majesty, intituled, *An Act for registering the Grants of Life Annuities; and for the better Protection of Infants against such Grants;* and to substitute other Provisions in lieu thereof.—[*14th July* 1813.] 302

[No. I. *Addenda.*] 3 Geo. IV. c. 92.—An Act to explain an Act of the Fifty-third Year of the Reign of his late Majesty respecting the Enrolment of Memorials of Grants of Annuities.—[*29th July* 1822.] 402

PART III. CLASS VII.

Gaming.

[No. I.] 33 Henry VIII. c. 9.—The Bill for the maintaining Artillery, and the debarring of unlawful Games 307

[No. II.] 16 Charles II. c. 7.—An Act against deceitful, disorderly, and excessive Gaming ..... *ib.*

[No. III.] 10 & 11 William III. c. 17.—An Act for Suppressing of Lotteries..309

[No. IV.] 9 Anne, c. 6.—An Act for reviving, continuing and appropriating certain Duties upon several Commodities to be exported; and certain Duties upon Coals to be water-born and carried Coastwise; and for granting further Duties upon Candles, for Thirty-two Years; to raise Fifteen Hundred Thousand Pounds, by way of a Lottery, for the Service of the Year One Thousand Seven Hundred and Eleven; and for suppressing such unlawful Lotteries, and such Insurance Offices, as are therein mentioned..... ib.

[No. V.] 9 Anne, c. 14.—An Act for the better preventing of excessive and deceitful Gaming ..... ib.

[No. VI.] 10 Anne, c. 26.—An Act for laying additional Duties on Hides and Skins, Vellum and Parchment, and new Duties on Starch, Coffee, Tea, Drugs, Gilt and Silver Wire, and Policies of Insurance, to secure a yearly Fund for Satisfaction of Orders to the Contributors of a further Sum of One Million Eight Hundred Thousand Pounds towards her Majesty's Supply; and for the better securing the Duties on Candles; and for obviating Doubts concerning certain Payments in *Scotland*; and for suppressing unlawful Lotteries, and other Devices of the same kind; and concerning Cake Sope; and for Relief of *Mary Ravenall*, in Relation to an Annuity of Eighteen Pounds *per Annum*; and concerning Prize Cocoa Nuts brought from *America*; and certain Tickets which were intended to be subscribed into the Stock of the *South Sea* Company; and for appropriating the Monies granted in this Session of Parliament.....314

[No. VII.] 8 George I. c. 2.—An Act for continuing the Duties on Malt, Mum, Cyder and Perry, to raise Money by way of a Lottery, for the Service of the Year One Thousand Seven Hundred and Twenty-two; and for transferring the Deficiencies of a late Malt Act to the Land Tax for the said Year; and for giving Time for inserting the Money given with Apprentices in their Indentures; and touching lost Bills, Tickets or Orders; and for exchanging the Tickets in the Exchequer for Certificates; and for suppressing Lotteries denominated Sales, and other private Lotteries; and for enlarging the Time for the Accountant General of the Bank of *England* to return Duplicates of Annuities into the Exchequer..... ib.

[No. VIII.] 9 George I. c. 19.—An Act to continue the Duties for Encouragement of the Coinage of Monies; and for Relief of *William* late Lord *Widdrington*; and to prevent Foreign Lotteries being carried on in this Kingdom; and for ascertaining the Duties on Bound Books imported; and for Issuing Certificates and Debentures for Arrears due to five Regiments, to be satisfied by Annuities therein mentioned; and for discharging the Duties of Rock-Salt lost on the Rivers *Weaver* and *Mersey*; and for limiting the Times of Continuance of Commissioners for forfeited Estates in *England* and *Scotland* respectively; and for appropriating the Supplies granted to his Majesty in this Sessions of Parliament; and to rectify the Misnomers and Omissions of Commissioners for the Land Tax, in the Year One Thousand Seven Hundred and Twenty-three 315

[No. IX.] 2 George II. c. 28.—An Act to revive the Laws therein mentioned, relating to the Importation of Foreign Brandy, and other Waters and Spirits; for Importation of Cochineal; to continue several Acts for preventing Frauds in the Customs; for Encouragement of the Silk Manufactures of this Kingdom; for making Copper Ore of the *British* Plantations an enumerated Commodity; for making perpetual an Act therein-mentioned, for suppressing of Piracy; for enabling Persons prosecuted upon the *Capias*, in relation to the running of Goods, to defend in *Forma Pauperis*; for more effectual debarring of unlawful Games; for Licensing Retailers of Brandy, and other distilled Liquors, and for better Regulation of Licences for common Inns and Alehouses..... ib.

[No. X.] 6 George II. c. 35.—An Act for appointing Commissioners to examine, state and report who of the Sufferers in the *Charitable Corporation* are Objects of Compassion, according to the Descriptions therein-mentioned; and for giving Relief to such Sufferers; and for enforcing the Laws made against Foreign Lotteries; and for impowering the said Commissioners to hear and determine the Claims of such Creditors and Proprietors of the said Corporation, as have not made their Claims within the Time limited by an Act made in the last Session of Parliament, *for taking, stating and determining all the Claims and Demands of the Creditors of the said Corporation, and of all Persons claiming any Share or Interest in the Stock or Fund of the said Corporation*..... ib.

[No. XI.] 12 George II. c. 28.—An Act for the more effectual preventing of excessive and deceitful Gaming.....316

[No. XII.] 13 George II. c. 19.—An Act to restrain and prevent the excessive Increase of Horse Races, and for amending an Act made in the last Session of Parliament, intituled, *An Act for the more effectual preventing of excessive and deceitful Gaming*.....319

[No. XIII.] 18 George II. c. 34.—An Act to explain, amend, and make more effectual the Laws in being, to prevent excessive and deceitful Gaming, and to restrain and prevent the excessive Increase of Horse Races ..... *ib.*

[No. XIV.] 27 George III. c 1 —An Act to render more effectual the Laws now in being for suppressing unlawful Lotteries..... *ib.*

[No. XV] 34 George II c. 40 —An Act for granting to his Majesty a certain Sum of Money, to be raised by a Lottery..... *ib.*

[No. XVI.] 42 George III. c 119 —An Act to suppress certain Games and Lotteries not authorized by Law..... *ib.*

PART III. CLASS VIII.

Stock Jobbing.

[No. I.] 7 George II. c. 8.—An Act to prevent the infamous Practice of Stock Jobbing 320

PART III CLASS IX.

Sale of Offices.

[No. I.] 12 Richard II. c. 2.—None shall obtain Offices by Suit, or for Reward, but upon Desert.....325

[No. II.] 5 & 6 Edward VI. c. 16.—Against Buying and Selling of Offices .. *ib.*

[No. III] 49 George III. c. 126.—An Act for the further Prevention of the Sale and Brokerage of Offices.—[*20th June* 1809.] 328

[No. IV.] 53 George III. c. 54.—An Act to amend an Act made in the Forty-ninth Year of his Majesty's Reign, intituled, *An Act for the further Prevention of the Sale and Brokerage of Offices*.....333

PART III. CLASS X.

Buying of Titles.

[No. I.] 3 Edward I. c. 25.—None shall commit Champerty, to have Part of the Thing in Question.....334

[No. II.] 13 Edward I. st. 1. c. 49 —The Penalty for buying the Title of Land depending in Suit. A Remedy for Suits where the Law faileth..... *ib.*

[No. III.] 32 Henry VIII. c. 9 —The Bill of Bracery and buying of Titles.. *ib.*

PART III. CLASS XI.

Transfer of Stock.

[No. I.] 36 Geo. III. c. 90.—An Act for the Relief of Persons equitably and beneficially entitled to or interested in the several Stocks and Annuities transferrable at the Bank of *England*.—[*14th May* 1796.].....337

[No. II.] 52 Geo. III c. 32.—An Act for the Relief of Infant Suitors in Courts of Equity, entitled to Stock or Annuities in any of the Public or other Funds, transferrable at the Bank of *England*.—[*20th April* 1812.].....339

[No. III.] 52 Geo. III. c. 158.—An Act to extend the Provisions of an Act passed in the Thirty-sixth Year of the Reign of his present Majesty, for the Relief of

Persons equitably entitled to Stocks and Annuities transferrable at the Bank of *England*, and of an Act passed in this present Session for the Relief of Infant Suitors entitled to the like Stocks and Annuities, to all other transferrable Stocks and Funds.—[*29th July* 1812.] 340

[No. IV.] 58 Geo. III. c. 80.—An Act to amend an Act passed in the Fifty-seventh Year of his present Majesty, for permitting the Transfer of Capital from certain Public Stocks or Funds in *Great Britain* to certain Public Stocks or Funds in *Ireland*.—[*5th June* 1818.] 341

[No. V.] 1 Geo. IV. c. 5.—An Act to enable Courts of Equity in *Ireland* to compel a Transfer of Stock in Suits without making the Governor and Company of the Bank of *Ireland* or any Canal Company Party thereto.—[*6th June* 1820.] ..... *ib.*

[No. VI.] 1 & 2 Geo. IV. c. 73.—An Act to permit for Three Years the Transfer from certain Public Stocks or Funds in *Ireland* to certain Public Stocks or Funds in *Great Britain*.—[*2d July* 1821.] ..... *ib.*

PART III. CLASS XII.

Restitution of Stolen Property.

[No. I.] 21 Henry VIII. c. 11.—At what Time Restitution shall be made of Goods stolen 342

[No. II.] 2 & 3 Philip and Mary, c. 7.—An Act against the buying of stolen Horses 342

[No. III.] 31 Elizabeth, c. 12.—An Act to avoid Horse stealing 344

[No. IV.] 1 James I. c. 21.—An Act against Brokers 346

PART III. CLASS XIII.

Executors and Administrators.

[No. I.] 9 Henry III. c. 18.—(MAGNA CHARTA.)—The King's Debtor dying, the King shall be first paid 348

[No. II.] 13 Edward I. st. 1. (Westminster 2.) c. 19.—The Ordinary chargeable to pay Debts as Executors ..... *ib.*

[No. III.] 13 Edward I. st. 1. (Westminster 2.) c. 23.—Executors may have a Writ of Accompt ..... *ib.*

[No. IV.] 4 Edward III. c. 7.—Executors shall have an Action of Trespass for a Wrong done to their Testator ..... *ib.*

[No. V.] 25 Edward III. st. 5. c. 5.—Executors of Executors shall have the Benefit and Charge of the first Testator 349

[No. VI.] 31 Edward III. st. 1. c. 4.—Redressing of Extortion in Bishops' Officers in proving Wills ..... *ib.*

[No. VII.] 31 Edward III. st. 1. c. 11.—To whom the Ordinary may commit the Administration of the Goods of him that dieth intestate. The Benefit and Charge of an Administrator ..... *ib.*

[No. VIII.] 9 Henry VI. c. 4.—An *Idemptitate nominis* maintainable by Executors, &c 350

[No. IX.] 33 Henry VI. c. 1.—A Remedy for Executors against Servants that imbezzle their Master's Goods after his Death 351

[No. X.] 21 Henry VIII. c. 4.—The Sale of Lands by Part of the Executors lawful 352

[No. XI.] 21 Henry VIII. c. 5.—What Fees ought to be taken for Probate of Testaments ..... *ib.*

[No. XII.] 32 Henry VIII. c. 37.—For Recovery of Arrearages of Rents by Executors of Tenant in Fee-simple 355

[No. XIII.] 43 Elizabeth, c. 8.—An Act against fraudulent Administration of Intestates Goods 355

[No. XIV.] 17 Charles II. c. 8.—An Act for avoiding unnecessary Suits and Delays 356

[No. XV.] 22 & 23 Charles II. c. 10. (6.)—An Act for the better Settling of Intestate Estates ..... *ib.*

[No. XVI.] 29 Charles II. c. 3.—An Act for the Prevention of Frauds and Perjuries 359

[No. XVII.] 30 Charles II. st. 1. c. 7.—An Act to enable Creditors to recover their Debts of the Executors and Administrators of Executors in their own Wrong. *ib.*

[No. XVIII.] 1 James II. c. 17.—An Act for reviving and Continuance of several Acts of Parliament therein mentioned 360

[No. XIX.] 4 William & Mary, c. 2.—An Act that the Inhabitants of the Province of *York* may dispose of their Personal Estates by their Wills, notwithstanding the Custom of that Province 361

[No. XX.] 4 & 5 William & Mary, c. 24.—An Act for reviving, continuing, and explaining several Laws therein mentioned, which are expired and near expiring *ib.*

[No. XXI.] 7 & 8 William III. c. 38.—An Act to take away the Custom of *Wales*, which hinders Persons from disposing their Personal Estates by their Wills. 362

[No. XXII.] 2 & 3 Anne, c. 5.—An Act to repeal a Proviso in an Act of the Fourth Year of the Reign of King *William* and Queen *Mary*, which prevents the Citizens of the City of *York* from disposing of their personal Estates by their Wills, as others inhabiting within the Province of *York* by that Act may do.. 363

[No. XXIII.] 4 & 5 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice. ..... *ib.*

[No. XXIV.] 11 George I. c. 18.—An Act for regulating Elections within the City of *London*, and for preserving the Peace, good Order and Government of the said City 364

[No. XXV.] 25 George II. c. 6.—An Act for avoiding and putting an End to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning real Estates in that Part of *Great Britain* called *England*, and in his Majesty's Colonies and Plantations in *America* ..... *ib.*

[No. XXVI.] 38 George III. c. 87.—An Act for the Administration of Assets in Cases where the Executor to whom Probate has been granted is out of the Realm.—[28*th June* 1798.] ..... *ib.*

[No. XXVII.] 58 George III. c. 81.—An Act for extending to that part of the United Kingdom called *Ireland* certain provisions of the Parliament of *Great Britain*, in relation to Executors under the age of Twenty-one Years, and to Matrimonial Contracts.—[5*th June* 1818.] 366

PART III. CLASS XIV.

Sales.

[No. I.] 58 George III. c. 82.—An Act to prevent Frauds in the Sale of Grain in *Ireland*.—[5*th June* 1818.] 367

PART III. CLASS XV.

Saving Banks.

[No. I.] 57 Geo. III. c. 130.—An Act to encourage the establishment of Banks for Savings in *England*.—[12*th July* 1817.] ..... *ib.*

[No. II.] 58 Geo. III. c. 48.—An Act to amend an Act passed in the last Session of Parliament to encourage the establishment of Banks for Savings in *England*. —[30*th May* 1818.] ..... *ib.*

[No. III.] 59 George III. c. 62.—An Act for the Protection of Banks for Savings in *Scotland*.—[2d *July* 1819.] ..... *ib.*

A

COLLECTION

OF THE

STATUTES,

&c. &c. &c.

PART III.

Personal Property and Contracts.

CLASS 1. Patents, Literary Property, &c.
— 2. Trade, Navigation, Ship-Owners, Mariners and Fisheries.
— 3. Insurance.
— 4. Bills of Exchange and Promissory Notes.
— 5. Usury.
— 6. Annuities.
— 7. Gaming.
— 8. Stock-Jobbing.
— 9. Sale of Offices.
— 10. Buying of Titles.
— 11. Transfer of Stock.
— 12. Restitution of Stolen Property.
— 13. Executors and Administrators.
— *14. Sales.
— *15. Saving Banks.
(* New Titles.)

CLASS I.

PATENTS, LITERARY PROPERTY, PROPERTY IN PRINTS, BUSTS, AND PATENTS OF MANUFACTURES.

[No. I.] 21 James I. c. 3.—An Act concerning Monopolies and Dispensations of Penal Laws, and the Forfeitures thereof.

21 Jac. I. c. 3.

All Monopolies, &c. shall be void.

Stile, 214. 3 Inst. 181, 182, 183. 1 Haw. P. C. p. 230, & sequent.

'FORASMUCH as your most excellent Majesty in your royal judgment and of your blessed disposition to the weal and quiet of your subjects did in the year of our Lord God one thousand six hundred and ten publish in print to the whole realm and to all posterity, that all grants and monopolies and of the benefit of any penal laws or of power to dispense with the law or to compound for the forfeiture are contrary to your Majesty's laws, which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm: And whereas your Majesty was further graciously pleased expressly to command that no suitor should presume to move your Majesty for matters of that nature; yet nevertheless upon misinformations and untrue pretences of public good many such grants have been unduly obtained and unlawfully put in execution to the great grievance and inconve-

No. I. 21 Jac. I. c. 3.

'nience of your Majesty's subjects, contrary to the laws of this your 'realm and contrary to your Majesty's most royal and blessed intention 'so published as aforesaid:' For avoiding whereof and preventing of the like in time to come, May it please your excellent Majesty, at the humble suit of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, that it may be declared and enacted; and be it declared and enacted by authority of this present Parliament, That all monopolies and all commissions grants licences charters and letters patents heretofore made or granted or hereafter to be made or granted to any person or persons bodies politick or corporate whatsoever of or for the sole buying selling making working or using of any thing within this realm or the dominion of *Wales*, or of any other monopolies or of power liberty or faculty to dispense with any others, or to give licence or toleration to do use or exercise any thing against the tenor or purport of any law or statute; or to give or make any warrant for any such dispensation licence or toleration to be had or made; or to agree or compound with any others for any penalty or forfeitures limited by any statute; or or of any grant or promise of the benefit profit or commodity of any forfeiture penalty or sum of money that is or shall be due by any statute before judgment thereupon had; and all proclamations inhibitions restraints warrants of assistance and all other matters and things whatsoever any way tending to the instituting erecting strengthening furthering or countenancing of the same or any of them, are altogether contrary to the laws of this realm, and so are and shall be utterly void and of none effect and in no wise to be put in ure or execution.

3 Mod. 131.

Monopolies, &c. shall be tried by the Common Laws of this Realm.

II. And be it further declared and enacted by the authority aforesaid, That all monopolies and all such commissions grants licences charters letters patents proclamations inhibitions restraints warrants of assistance and all other matters and things tending as aforesaid, and the force and validity of them and of every of them ought to be and shall be for ever hereafter examined heard tried and determined by and according to the common laws of this realm and not otherwise.

All Persons disabled to use Monopolies, &c.

III. And be it further enacted by the authority aforesaid, That all person and persons bodies politick and corporate whatsoever, which now are or hereafter shall be, shall stand and be disabled and uncapable to have use exercise or put in ure any monopoly or any such commission grant licence charter letters patents proclamation inhibition restraint warrant of assistance or other matter or thing tending as aforesaid, or any liberty power or faculty grounded or pretended to be grounded upon them or any of them.

The Party grieved by Pretext of a Monopoly, &c. shall recover treble Damages and double Costs.

IV. And be it further enacted by the authority aforesaid, That if any person or persons at any time after the end of forty days next after the end of this present session of Parliament shall be hindred grieved disturbed or disquieted, or his or their goods or chattels any way seized attached distrained taken carried away or detained by occasion or pretext of any monopoly or of any such commission grant licence power liberty faculty letters patents proclamation inhibition restraint warrant of assistance or other matter or thing tending as aforesaid, and will sue to be relieved in or for any of the premises; that then and in every such case the same person and persons shall and may have his and their remedy for the same at the common law by any action or actions to be grounded upon this statute; the same action and actions to be heard and determined in the courts of King's Bench Common Pleas and Exchequer or in any of them against him or them by whom he or they shall be so hindred grieved disturbed or disquieted, or against him or them by whom his or their goods or chattels shall be so seized attached distrained taken carried away or detained; wherein all and every such person and persons which shall be so hindred grieved disturbed or disquieted, or whose goods or chattels shall be so seized attached distrained taken carried away or detained, shall recover three times so much as the damages which he or they sustained by means or occasion of being so hindred grieved disturbed or disquieted, or by means of having his or their goods or chattels seized attached distrained taken carried away or detained and double costs;

No. I.
21 Jac. I. c. 3.

and in such suits or for the staying or delaying thereof, no essoign protection wager of law aid prayer privilege injunction or order of restraint shall be in any wise prayed granted admitted or allowed, nor any more than one imparlance: and if any person or persons shall after notice given that the action depending is grounded upon this statute, cause or procure any action at the common law grounded upon this statute to be stayed or delayed before judgment by colour or means of any order warrant power or authority, save only of the court wherein such action as aforesaid shall be brought and depending, or after judgment had upon such action shall cause or procure the execution of or upon any such judgment to be stayed or delayed by colour or means of any order warrant power or authority save only by writ of error or attaint; that then the said person and persons so offending shall incur and sustain the pains penalties and forfeitures ordained and provided by the statute of provision and *præmunire* made in the sixteenth year of the reign of King *Richard* the Second.

He that delayeth an Action grounded upon this Statute incurs a Præmunire.

16 R. 2. c. 5.

V. Provided nevertheless and be it declared and enacted, That any declaration before mentioned shall not extend to any letters patents and grants of privilege for the term of one-and-twenty years or under heretofore made of the sole working or making of any manner of new manufacture within this realm to the first and true inventor or inventors of such manufactures which others at the time of the making of such letters patents and grants did not use, so they be not contrary to the law nor mischievous to the state by raising of the prices of commodities at home or hurt of trade or generally inconvenient, but that the same shall be of such force as they were or should be if this Act had not been made and of none other: and if the same were made for more than one-and-twenty years, that then the same for the term of one-and twenty years only, to be accounted from the date of the first letters patents and grants thereof made, shall be of such force as they were or should have been if the same had been made but for term of one-and-twenty years only, and as if this Act had never been had or made and of none other.

Letters Patents to use new Manufactures saved.

VI. Provided also and be it declared and enacted, That any declaration before-mentioned shall not extend to any letters patents and grants of privilege for the term of fourteen years or under, hereafter to be made, of the sole working or making of any manner of new manufactures within this realm to the true and first inventor and inventors of such manufactures, which others at the time of making such letters patents and grants shall not use, so as also they be not contrary to the law nor mischievous to the state by raising prices of commodities at home or hurt of trade or generally inconvenient: (1.) the said fourteen years to be accounted from the date of the first letters patents or grant of such privilege hereafter to be made, but that the same shall be of such force as they should be if this Act had never been made and of none other. (2.)

(1.) A Patent was held void for an invention by which more Caps and Bonnets could be thickened by a fulling mill in one day than by the labour of fourteen men who got their livings by it, on the ground of its being inconvenient to turn so many labouring men to idleness—3 Inst. 184. This mode of contemplating the effect of machinery to shorten labour is a fair specimen of the wisdom of our ancestors upon questions of political economy. A very different view of the subject had taken place at the time of the trial respecting Arkwright's patent (1785), when the inconvenience urged arose from the confining the benefit of an invention of such extensive consequence to a single individual. In the *scire facias* in that case, one of the objections alleged against the patent was, that it was *prejudicial and inconvenient to the subjects in general*, and issue was taken upon that allegation; but at the opening of the trial, Buller, Justice, interposed, intimating his opinion that it was a mere consequential issue and a question of law upon which the prosecutors could not be permitted to give any evidence; and that if it was necessary to attack the patent upon those general words of the Act of Parliament, it should be stated in what respect it was so, and then the fact would be put in issue; and after some discussion, it was agreed that the case should be tried on the other issues in which the patent was impeached on specific grounds.

(2.) The general objects of this Act in suppressing monopolies having been fully accomplished, the only questions which now arise respecting it are upon the effects of patents granted under this proviso. The patents are granted in an established and uniform form, except so far as relates to stating the particular subject of the grant, and contain a proviso that if the patentee

No. I. 21 Jac. I. c. 3.

VII. Provided also and it is hereby further intended declared and enacted by authority aforesaid, That this Act or any thing therein contained shall not in any wise extend or be prejudicial to any grant or privilege power or authority whatsoever heretofore made granted allowed or confirmed by any Act of Parliament now in force so long as the same shall so continue in force.

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should not particularly describe and ascertain the nature of his invention, and in what manner the same is to be performed, by an instrument in writing to be inrolled in chancery within one month after the date, the grant shall be void. The instrument so required is called the Specification. The terms of the grant are usually very general and only express the object and purpose of the invention, the particular description of which is reserved for the Specification, which may be considered as incorporated in the patent. The points to be considered with reference to the law of patents may be divided into the following heads:—1st. the Nature and Subject Matter of the Invention—2nd, the Originality—3rd, the Sufficiency of the Specification—4th, the Degree of Similarity, which amounts to an Infraction—5th, the Judicial Proceedings by which the Patent may be supported, (a) by Action at Law, (b) by Suit in Equity, or rescinded, viz. (c) by writ of *scire facias*.

I. Upon the first and most of the other points respecting the validity of patents the fullest information is to be derived from the cases respecting the patent granted to Mr. Watt, for an invention for lessening the consumption of steam and fuel in fire-engines. The Specification begins with stating, "My METHOD of lessening the consump- "tion of Steam consists of the following PRIN- "CIPLES;" and states the addition of some vessels called condensers with some rules for their construction and application. It was objected that a patent could not be granted merely for a method or principle; but that it must be for a formed and organized machine or instrument or manufacture. The Judges of the Common Pleas, in Bolton *v.* Bull, 2 H. Bl. 463. were equally divided as to the validity of this objection, Heath and Buller, J. being in favour of the objection, and Rooke, J. and Eyre, C. J. in favour of the patent; but in the subsequent case of Hornblower *v.* Bolton in error in the King's Bench, 8 T. R. 95. the patent was supported by the unanimous opinion of all the judges. The difference of opinion which subsisted does not appear to relate so much to the rules of law upon which the question ought to be decided, as to the construction of the particular specification; the judges whose opinions were conformable to the patent considered the specification as merely indicating a general *method or principle*, the other judges conceiving those words connected with the subsequent description as sufficiently designating a specific invention. From these opinions I have thought it eligible to make the following extracts, with reference to the general nature of the subject. Rooke, J. "A "new invented method conveys to my under- "standing the idea of a new mode of construc- "tion; I think these words are tantamount to "fire-engines of a newly-invented construction. "It is objected that the patentee professes to set "forth the principles only, but we are not bound "by what he professes to do but what he really "has done—it seems but reasonable that if he "sets forth his improvement intelligibly his spe- "cification should be supported, though he pro- "fesses only to set forth the principle. The "term principle is equivocal." The object of the patentee was "to condense [the steam "without cooling the cylinder—the means are "set forth."—"As to the articles of the specifi- "cation which denote intention only, and do not "state the thing to which it is to be applied, I "do not think he could maintain an action for "breach of these articles; for he cannot antici- "pate the protection before he is entitled to it "by practical accomplishment."—Heath J. "The "question is, inasmuch as this invention is to be "put in practice by means of machinery, whether "the patent ought not to have been for one "or more machines. If method and machinery "had been used by the patentee as convertible "terms, and the same consequences would result "from both, it might be too strong to say, that "the inventor should lose his patent by the "misapplication of his term." The proviso in the statute is for new manufactures. Such manufactures are reducible to two classes, the first includes machinery, the second substances (such as medicines) formed by chemical and other processes where the vendible substance is the thing produced, and that which operates preserves no permanent form. In the first class the machine, and in the second the substance produced is the subject of the patent. I approve of the term *manufacture* in the statute, because it precludes all nice refinements; that which is the subject of a patent ought to be specified, and it ought to be "That which is vendible, otherwise it cannot be "a manufacture." "The patent must be for the "vendible matter, not for the principle." "The "organization of a machine may be the subject "of a patent, but principles cannot."—Buller, J. "Upon the state of the case, I cannot say there "is any thing substantially new in the manufac- "ture; and it was admitted, that there were no "new particulars in the mechanism—that it was "not a machine or instrument which the plain- "tiffs had invented—that mechanism was not "pretended to be new in any of its parts—that "this engine does consist of all the same parts as "the old engine—and that the particular me- "chanism is not necessary to be considered." The very statement of what a principle is, proves it not to be a ground for a patent. It is the first ground and rule for arts and sciences, or in other words the elements and rudiments of them, a patent must be for some new production from those elements, and not for the elements themselves. "But it was said, that though an idea or "a principle alone would not support a patent,

VIII. Provided also, That this Act shall not extend to any warrant or privy seal made or directed or to be made or directed by his Majesty his heirs or successors to the justices of the courts of the King's Bench or Common Pleas and barons of the Exchequer, justices of assize, justices of *oyer* and *terminer* and gaol delivery, justices of the peace and other justices granted to Justices saved.

No. I.
21 J. I. c. 3.
Warrants

" yet an idea reduced into practice, or practical " application of a principle, was a good foundation " for a patent, and was the present case. The " mere application or mode of using a thing was " admitted not to be a sufficient ground, that if a " man of science were to devise the means of " making a double use of what was known before, " he could not have a patent for that; the me- " thod and mode of doing a thing are the same, " and I think it impossible to support a patent for " a method only, without having carried it into " effect and produced some new substance. A " principle reduced into practice can only mean a " practice founded on principle, and that practice " is the thing done or made, or in other words " the manufacture which is invented." " Me- " chanical and chemical discoveries all come " within the description of manufactures, and it " is no objection to either of them that the ar- " ticles of which they are composed were known " and were in use before, provided the compound " article which is the subject of the invention " was new. But then the patent must be for the " specific compound, and not for all the articles " and ingredients of which it was made." — Eyre, C. J. " It was admitted in the arguments " that the word *manufacture* in the statute was of " extensive signification; that it applied not only " to things made but to the *practice of making*, " to principles carried into practice in a new " manner, to new results of principles carried " into practice. Under *things made* we may class, " in the first place, new compositions of things, " such as manufactures in the most ordinary " sense of the word; secondly, all mechanical in- " ventions, whether made to produce new or old " effects, for a new piece of mechanism is cer- " tainly a thing made. Under the *practice of* " *making*, we may class all new artificial manners " of operating with the hand or with instruments " in common use; new processes in any art pro- " ducing effects useful to the public, when the " effect produced is some new substance or com- " position of things, it should seem that the privi- " lege of the sole making or working ought to be " for such new substance or composition, without " regard to the mechanism or process by which it " has been produced, which, though perhaps also " new, will be only useful as producing the new " substance." When the effect produced is no substance or composition of things, the patent can only be for the mechanism, if new mechanism is used; or for the process, if it be a new method of operating with or without old mechanism, by which the effect is produced. And this compendious analysis of new manufactures mentioned in the statute satisfies my doubt, whether any thing could be the subject of a patent, but something organised and capable of precise specification. " An improper use of the word *principle* set forth " in this specification has, I think, served to " puzzle the case. Undoubtedly there can be no " patent for a mere principle; but for a principle " so far embodied and connected with corporeal " substances as to be in a condition to act and to " produce effects in any art, trade, mystery, or " manual occupation, I think there may be a " patent; now this is, in my judgment, the thing " for which the patent was granted. It is not " that the patentee has conceived an abstract no- " tion that the consumption of steam in fire-en- " gines may be lessened, but he has discovered a " practical manner of doing it, and for that prac- " tical manner of doing it he has taken out his " patent. It is a patent not for a principle but a " process—it is no abstract principle—it is in its " very statement clothed with practical applica- " tion—it points out what is to be done."—— Lord Kenyon, " The principal objection made to " this patent is, that it is a patent for a philo- " sophical principle only, neither organized nor " capable of being organized; and if the objection " was well founded in fact it would be decisive, " but I do not think it is so. By comparing the " patent and the manufacture (qu. Specification) " together, it evidently appears that the patentee " claims a monopoly for an engine or machine " composed of mechanical parts which are to " produce the effect described, and that the mode " of producing this is so described as to enable " mechanics to produce it."——Ashurst, J. ex- pressed his opinion very generally in favour of the Patent.——Grose J. " It seems to me that this " is not a patent for a mere principle, but for the " working and making of a new manufacture " within the words and meaning of the statute." " The specification describes the principles of the " method, and the method by which those prin- " ciples are to be carried into effect."—He also states a method by which the engine may be worked by the alternate expansion and contraction of the steam. This method, however, if not ef- fected or accompanied by a manufacture, I should hardly consider as within the statute; but it seems to me that in this specification he does describe a new manufacture by which his principle is realized. The patent states the principles on which the in- ventor proceeds, and shews in his specification the manufacture by means of which those principles are to take effect.——Lawrence, J. " If it were ne- " cessary to consider whether or not mere abstract " principles are the subject of a patent, I should " feel great difficulty in deciding that they are, " but that consideration is unnecessary upon the " present occasion; because, by looking at the " patent and the recital in the Act of Parliament " for continuing it for a longer term, it appears " that Watt applied for and obtained a patent " for an engine or mechanical contrivance for " lessening the consumption of steam." The specification states that the *method* consists in cer- tain principles, as they are called, which are de-

No. I. 21 Jac. I. c. 3.

tices for the time being, having power to hear and determine offences done against any penal statute, to compound for the forfeitures of any penal statute depending in suit and question before them or any of them respectively after plea pleaded by the party defendant.

Charters granted to Corporations saved. 3 Inst. 185.

IX. Provided also and it is hereby further intended declared and enacted, That this Act or any thing therein contained shall not in any wise extend or be prejudicial unto the city of *London* or to any city borough

scribed in the specification—the statute reciting that the King had granted the sole benefit of making and vending certain *engines*, and that he had inrolled a description of the said engine. From this therefore it is clear that the Legislature* understood that the patent was for an engine for some mechanical contrivance. Engine and method mean the same thing, and may be the subject of a patent. "Method," properly speaking, is only placing several things and performing several operations in the most convenient order; but it may signify a *contrivance* or *device*, so may an *engine*, and therefore I think it may answer the word "Method." So "Principle" may mean a mere elementary truth, but it may also mean constituent parts, and in effect the specification is this, "the contrivance by which I lessen the consumption of steam consists in the following "principles, that is, constituent or elementary "parts, a steam vessel," &c. "That is the description of the thing when put into different "language." In the above extracts I have purposely kept as much as possible out of view the precise circumstances and the qualities of the particular invention, with regard to which I should feel considerable difficulty in assenting to the conclusions that were finally drawn, conceiving that a better elucidation would be given to the general subject by shewing the grounds and principles upon which, in the opinion of the judges, the question as to the nature and character of the subject ought to be decided, than by mixing the discussion with an inquiry with respect to the justness of their particular applications. Two principles may, with confidence, be deduced from the case, viz. 1st, that the subject matter of the privilege must be a defined and specific contrivance; and, 2ndly, that the character of the invention is to be judged from a consideration of the nature of the invention as particularly described, and not by any verbal criticism upon the general terms which may be accidentally used in characterising it. The question respecting the validity of a patent, for an addition to a subject previously known, falls rather under the following head of discussion than the present.

II. As to the originality of the invention. In Edgebury *v.* Stephens, 2 Salk. 447. it was ruled that the first introducer of an invention practised beyond sea should be deemed the first inventor.—A previous invention not brought into practice, does not impugn the claim to originality in the grantee of the patent. Therefore in the case on Dolland's object glasses, cited by Buller, J. in Bolton *v.* Bull, 2 H. B. 487. the question was whether Dolland or Hall was the first and true inventor, within the meaning of the statute; Hall having first made the discovery in his closet, but never made it public, and on that ground Dolland's patent was confirmed.

With respect to a variation in the form or manner of an invention formerly used, the following view taken by Buller, J. of the evidence, as to one part of the machine that was the subject of Arkwright's trial, will not be immaterial—"They had that before which answered the same purpose, though not made exactly in the same form; if it was new it was of no use, but they say it was not new, for though it was not precisely in the same shape in substance, it was the same thing."

In a trial on the validity of Tennant's patent, for a bleaching liquor, a person stated that he had used the same preparation in bleaching for five or six years, and had kept it a secret from all but his partners, and two servants, concerned in preparing it. Another witness proved that he had suggested to the patentee that he would probably attain his end, by a certain method, which Tennant afterwards told him had succeeded.—The plaintiff was nonsuited on this evidence, because he could not prove that the object of it was a new discovery, or that he himself was the sole inventor.—Collier on Patents, 117. The latter circumstance can hardly be supposed to have had much influence on the decision, for it would be contrary to all reason and authority, to contend that the mere suggestion of the probable success attending the adoption of a given method to obtain an object contemplated by the party to whom the suggestion is made, shall deprive such party of the credit of originality, in an invention which he first carried into practical effect; and it would be almost impossible in the nature of things, for any invention to be deemed original, if it could be construed otherwise, by shewing that the inventor had been assisted by some accidental hints from those whom he had consulted in carrying on the process of his discovery. Upon inquiry from the attorney concerned for the plaintiff in the cause, I find that

* It is to be regretted, that such arguments as this should be resorted to by a judge of the superior intellect which indisputably belonged to Sir Soulden Lawrence. The patent was granted for the ordinary term; an Act of Parliament was passed for the extension of it to a longer period, expressly saving all objections to the original patent; and from the whole tenor of the Act it is evident that nothing could be more distant from the intention of it, than by means of the incidental expressions used in denoting the subject of the invention to decide or prejudice any question as to its nature, or to induce a different view of the case, in consequence of the provision for the extension of the term, from that which ought to have been taken if no such extension had been made and the case had rested upon its original merits.

or town corporate within this realm for or concerning any grants charters or letters patents to them or any of them made or granted, or for or concerning any custom or customs used by or within them or any of them; or unto any corporations companies or fellowships of any art trade occupation or mystery, or to any companies or societies of merchants within this realm erected for the maintenance enlargement or ordering of any

positive evidence was given of the invention having been in public use, and that such evidence was the principal ground of the decision.*

Under this head it will be proper to advert to the validity of a patent, for an addition to an invention previously existing. In 3 Inst. 184. it is said, that such a privilege as is not contrary to law, must be essentially and substantially newly invented; but if the substance was *in esse* before, and a new addition thereunto, though that addition make the former more profitable, yet it is not a new manufacture in law, and so it was resolved, in the Exchequer chamber, 15 Eliz. in Bircot's case, for a privilege, concerning the preparing and melting of lead ore; for there it was said, that that was but to put a new button to an old coat, and it is much easier to add than invent.—In Bolton *v.* Bull, Buller, J. observed, "that it did not appear what were the particular facts of that case, and there seemed to be more quaintness than solidity in the reason assigned. If the button were new, he did not feel the weight of the objection, that the coat on which the button was to be put, was old."—Mr. J. Buller also mentioned the case of Morris *v.* Branson, before Lord Mansfield, in which a patent for an addition to the old stocking frame was supported, and said that since that time it had been the generally received opinion at Westminster Hall, that a patent for an addition is good, 2 H. B. 489.—"But then it must be for the addition only, and not for the old machine too. In Jessop's case the patent was held to be void, because it extended to the whole watch, and the invention was a particular movement only. Where a patent is taken for an improvement only, the public have a right to purchase that improvement by itself, without being incumbered with other things."—*Ibid.*

One of the strong objections to Bolton and Watt's patent was, that it extended to the whole machine, and not merely to the new invention, and the opinion of Buller, J. was in favour of the objection; but in the Court of King's Bench the patent was held to extend only to the addition, and the court thought that the patent was only for the additional improvement, 8 T. R. 95. Upon this as well as the preceding part of the case, it is not material to the exposition of the general principle to examine the accuracy of the opinion which finally prevailed in the particular instance.

In Turner *v.* Winter, 11 E. 109. note, the patent was for ground lace, and the specification went generally to the invention of mixing silk and cotton thread upon the frame. This had been done before, but in a less convenient manner; but Buller, J. held, that as the patent claimed the exclusive liberty of making lace, composed of silk and cotton thread mixed, and not of any particular mode of mixing it, it was void.

There is no objection upon which patents more frequently fail, or which it requires greater caution to avoid, than making the grant, as described in the specification, more extensive than the discovery; and it is settled, that if the specification is objectionable on this ground, it defeats the entire patent, and not merely so much of it as relates to what is not newly invented. When the nature of the subject renders it necessary in the description to blend the new discovery with a preceding subject, it is desirable, in order to avoid misapprehension, particularly and distinctly to declare what part of the description is intended to be relied upon as constituting the discovery for which the exclusive privilege is claimed.—See Harman *v.* Playne, 11 East. 101. more particularly stated *infra*. A patent was granted for an improvement upon a machine, for which there was a subsisting patent, as not infringing upon the rights of the former patentee; but it was said, that if the improvements could not be used without the engine for which the patent had been granted, they must wait for the expiration of that patent.—Ex-parte Fox. 1st V. and B. 67.

III. With respect to the sufficiency of the specification, the general rules, which are always acted on, are clearly laid down in Turner *v.* Winter, 1 T. R. 603. where it was said, per Ashurst, J. "It is incumbent on the patentee to give a specification of the invention, in the clearest and most unequivocal terms of which the subject is capable; and if it appears that there is any unnecessary ambiguity, affectedly introduced into the specification, or any thing which tends to mislead the public, in that case the patent is void."—If the process as directed by the specification does not produce that which the patent professes to do, the patent itself is void. It is certainly of consequence that the terms of a specification should express the invention in the clearest and most explicit manner, so that a man of science may be able to produce the thing intended without the necessity of trying experiments. Buller, J. "Whenever the patentee brings an action on his patent, if the novelty or effect of the invention be disputed, he must shew in what his invention consists, and that he produces the effect proposed by the patent, *in the manner specified*.—If he could make the matter described, with only two or three

* Quære, Whether a patent can be good if obtained for a mere process to be carried on by known implement or elements acting upon known substances; inasmuch as the word "manufacture," in 21 Jac. 1. c. 3. seems rather to be confined either to some new article or to some new instrument, to be used in making an article previously well known? And held: that at all events no merely philosophical or abstract principle can answer to that word or be the subject of a patent. —Rex *v.* Wheeler, 2 B. & A. 345.

No. I. 21 Jac. I. c. 3.

trade of merchandize; but that the same charters customs corporations companies fellowships and societies and their liberties privileges powers and immunities shall be and continue of such force and effect as they were before the making of this Act and of none other; any thing before in this Act contained to the contrary in any wise notwithstanding.

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of the ingredients specified, and he has inserted others which will not answer the purpose, that will avoid the patent. So if he make the article, for which the patent is granted, with cheaper materials than those which he has enumerated, although the latter will answer the purpose equally well, the patent is void; because he does not put the public in possession of his invention, or enable them to derive the same benefit which he himself does." In the particular case, there were three objections, which were all held fatal:—1st, That in order to produce the effect, you must go out of the patent;—2nd, That a substance was mentioned in general terms, of which there were three species, one whereof only was applicable to the process in question;—3rd, That the patent professed to do three things, and that by failing in one of them it was void. Buller, J. cited a case before Lord Mansfield, for infringing a patent for steel trusses, whence it appeared that the patentee, in tempering the steel, rubbed it with tallow, which was of some use in the operation, and because this was omitted, the specification was held to be insufficient, and the patent was avoided. This certainly was carrying the matter to the utmost possible degree of strictness, and rather beyond the fair claims of public convenience.—In the trial on Arkwright's patent, Buller, J. in his directions to the jury, expressed himself with respect to the specification as follows:—"It is clearly settled as "law, that a man, to entitle himself to the benefit "of a patent, must disclose his secret and specify "his invention in such a way, that others may be "taught by it to do the thing for which the patent "is granted, and it must put the public in pos-"session of the secret in as ample and beneficial "a way as the patentee himself had used it; and, "therefore, unless the discovery be true and fair, "the patent is void. If the specification, in any "part of it, be materially false or defective, the "patent is against law and cannot be supported. "It has been truly said, that if the specification be "such, that mechanical men of common under-"standing can comprehend it, to make a machine "by it, it is sufficient; but then it must be such "that the mechanics may be able to make the "machine, by following the directions of the spe-"cification, without any new inventions, or ad-"ditions of their own." In the same case, among various other objections, it appeared, that some things were specified as part of the invention, which were no part of the engines actually used; with respect to which, the learned judge observed—"If those are of no use, but to be thrown in "merely to puzzle, I have no difficulty to say, that, "upon that ground alone, the patent is void; for "it is not that fair, full, true discovery, which the "public have a right to demand."—In Bolton v. Bull, 2 H. B. 463. the compliance with the rule of law upon this subject, appears to be very accurately stated, by the finding in the special verdict, "That the specification is of itself sufficient "to enable a mechanic, acquainted with the fire-"engines previously in use, to construct fire-en-"gines producing the effect of lessening the con-"sumption of fire and steam, in fire-engines, upon "the principle invented by the patentee."

In Harmer v. Playne, 11 East, 101. a patent had been granted for a machine, of which the specification was duly inrolled; and another patent was afterwards granted to the same person for improvements on the machine, the specification of which described the whole machine in its improved state without distinguishing the machine in its improved state, from the state and condition of it under the former patent; and the court of King's Bench certified to the Lord Chancellor in favour of the validity of the patent. Lord Ellenborough said, upon this occasion, "Reference must often be made in these cases to matters of general science, as the party must carry a reasonable knowledge of the subject-matter with him, in order clearly to comprehend specifications of this nature, though fairly intended to be made."*

IV. There is no discussion in any of the authorities with regard to the degree of similarity to the invention, which is the subject of a patent, which will amount to an infraction; but the true principles of decision, in this respect, seem to be comprised in the following extracts from the opinion of Rooke, J. in Bolton v. Bull, 2 H. B. 479.: "The mechanical improvement, and not the form of the machine, is the object of the patent; and if this mechanical improvement is intelligibly specified, of which a jury must be the judges, we may, I think, protect the patentee"—"Infringement, or not, is a question for the jury."

V. With respect to the remedy for infraction of a patent, the most usual course is by action at law. For the form of declaration, V. 2 Chitty on Pleadings, 317. 8 Went. 431. As to the evidence to be given in the first instance, Buller, J. in Turner v. Winter, 1 T. R. 602. already cited, said, "I hold that a plaintiff must give some evidence to shew what his invention was, unless the other side admit that it has been tried and succeeds. Whenever the patentee brings an action on his patent, if the novelty or effect of the invention be disputed, he must shew in what his invention consists, and that he produced the effect proposed by the patent in the manner specified. Slight evidence of this on his part is sufficient, and it is then incumbent on the defendant to falsify the specification."

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* As to the necessity of confining the specification to the improvements when the invention consists only in adding certain combinations to others previously existing, see Bovill v. Moore, 2 Marsh. 21].

No. I.
21 Jac. I. c. 3.

X. Provided also and be it enacted, That this Act or any declaration provision disablement penalty forfeiture or other thing before-mentioned shall not extend to any letters patents or grants of privilege heretofore made or hereafter to be made of for or concerning printing, nor to any commission grant or letters patents heretofore made or hereafter to be made of for or concerning the digging making or compounding of salt-petre or gunpowder or the casting or making of ordnance or shot for ordnance, nor to

Letters Patent that concern Printing, Saltpetre, Gunpowder, great Ordnance, Shot or Offices, saved.

Another mode of redress against the infraction of patents is by bill in equity for an injunction. Formerly an injunction was not granted, if the validity of the patent was disputed, without a previous trial at law.—An. 1 Vern. 120. [The case related to the validity of a patent for the sale of bibles, and not to any patent founded upon the exception in the statute, 21 Jac. but I apprehend, that the principle would be the same.] Tottells *v.* University of Cambridge, 1 Vern. 275.; and the same was held by Lord Clare, as Chancellor of Ireland, in Grierson *v.* Jackson, Irish T. R. 304. But more modern cases have taken a different course. In Bolton *v.* Bull, 3 Vesey, 140. an injunction was obtained, that the question of the validity of the patent might be tried at law, and the judges of the Common Pleas having been equally divided in the case so often cited in the present note, the Lord Chancellor said, that he could not put the patentees upon the acceptance of terms, that, upon collateral reasons, they may think disadvantageous to the exercise of the right of which they are in possession; neither can I put them out of possession, upon the difference of opinion of the court. I will not put them to compensation—I will not disturb the possession of their specific right. It is of notoriety, that this fire-engine has been erected in many parts of the country with great advantage. And this doctrine was confirmed by Lord Eldon, in the case of the Universities of Oxford and Cambridge *v.* Richardson, 6 Vesey, 629; and in Harmer *v.* Playne, 14 Vesey, 130. when his lordship said, "When the Crown, on behalf of the public, grants letters patent, the grantee entering into a contract with the Crown, the benefit of which contract the public are to have, and the public have permitted a reasonably long and undisputed possession under colour of the patent, the court has thought, upon the fact of that possession proved against the public, that there is less inconvenience in granting the injunction until the legal question can be tried, than in dissolving it at the hazard that the grant of the Crown may in the result prove to have been valid."

I cannot help feeling, that there is something unsatisfactory in the principles which have been just mentioned. The analogy between the actual and manifest possession of a corporeal subject, and the supposed possession of a patentee, is apparently a very fallacious one. In the first instance, there is, from the nature of the subject, a right of possession and property somewhere, and the fair presumption is in favour of the actual specific possession, which, in general, could not have been obtained against those having the right without an immediate resistance; whereas, with respect to monopolies, the presumption is in favour of the general liberty of the community to apply their talents and industry according to their own discretion, subject, under particular circumstances of a peculiar nature, to restraint, on behalf of favoured individuals—but that restraint is the exception, which, in the nature of the thing, requires to be supported by full and absolute proof. The idea of a contract by the Crown in favour of the public appears rather of a fanciful nature. There is no absolute contract on the part of the grantee—no stipulation on his part, which he is under any positive obligation to perform, but a mere condition attached to the right conferred, and the subsistence of which condition is essential to the validity of the right. The Crown, in granting the right with the condition attached, assumes nothing as to the subsistence or non-subsistence of the condition, which is entirely matter of proof on the part of the grantee, and of proof in the nature of a condition precedent, as completely as if it had been expressed in terms, that in case the grantee should prove the requisites prescribed, he should be entitled to the benefit conferred—and in this view of the subject no material detriment can arise from the patent being admitted to pass upon the *ex parte* representation of the party applying for it as a matter of official routine, without any judicial contest with the parties interested in opposing it, and which contest could not, from the nature of the case, be carried on with any beneficial effect; he takes the proof of the validity on himself, and there is no harm done—but if, in substance and effect, the mere grant itself carries a presumption in favour of its validity, an injury is committed to the public, by the effectual operation of the grant during the period that a legal question on the right can be kept in suspense, and the cases in substance and effect confer that right for that period, however repugnant to the restrictions of the statute. If the right of the patentee is infringed, he has a claim to redress by damages at law or an account in equity, upon establishing his right, although not so full and adequate a remedy as by injunction; but if, by an unfounded grant of monopoly, the general rights of the community are restrained during the period of inquiry, all redress or compensation to those whose general liberty is improperly restrained is, from the nature of the thing, entirely out of the question. The supposed possession against the public is the mere assertion by the party of a right, which right depends upon his establishing, by positive proof, the existence of facts, of which the existence or non-existence is, *à priori*, equally uncertain; and nothing can be more completely vague and indefinite than the additional requisite of "a reasonably

No. I. 21 Jac. I. c. 3.

any grant or letters patents heretofore made or hereafter to be made of any office or offices heretofore erected made or ordained and now in being and put in execution other than such offices as have been decried by any his Majesty's proclamation or proclamations: but that all and every the same grants commissions and letters patents and all other matters and things tending to the maintaining strengthening and furtherance of the same or any of them shall be and remain of the like force and effect and no other, and as free from the declarations provisions penalties and forfeitures contained in this Act as if this Act had never been had nor made and not otherwise.

This Act shall not extend to Commissioners for Allum Mines.

XI. Provided also and be it enacted, That this Act or any declaration provision disablement penalty forfeiture or other thing before-mentioned shall not extend to any commission grant letters patents or privilege heretofore made or hereafter to be made of for or concerning the digging compounding or making of allum or allum mines, but that all and every the same commissions grants letters patents and privileges shall be and remain of the like force and effect and no other and as free from the declarations provisions penalties and forfeitures contained in this Act as if this Act had never been had nor made and not otherwise.

XII. [Nor to the liberties of *Newcastle-upon-Tyne* nor to licences of keeping taverns.]

XIII. [Nor to letters patents granted to Sir *Robert Mansel*, Knt. or to *James Maxwell*, Esq.]

XIV. [Nor to those granted to *Abraham Baker* or Lord *Dudley*.]

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long and undisputed possession." It is observable, that while the courts of equity sustain the patents upon the supposed presumption of validity, which arises from the mere circumstance of their having been granted, they decline entering into any actual examination of the question upon which such validity depends. To the [illegible] patents on account of the supposed bargain with the Crown, on behalf of the public, an answer appears to arise from the statute itself, which was so far from regarding the Crown in the character of a trustee for the public benefit, that the gross and flagrant abuses arising from the assumed prerogative of the Crown, for the benefit of particular favourites, in opposition to the general interests of the public, was the object and foundation of the interposition of the legislature; and when the prerogative, of which it was a primary object to check the abuse, was permitted to be returned, under certain conditions and modifications, it can hardly be supposed to have been intended, that the mere act assumed to be done should be in any degree regarded as evidence of the subsistence of the conditions upon which a particular exception was allowed, to the general restriction intended to be imposed. I cannot quit this subject without adverting to the observation of Lord Loughborough, as to the notoriety of the particular patent, which was immediately before him. The excellence and notoricty of an invention can never be a proper matter of judicial knowledge; the legal objections to the patent of Bolton and Watt arose from the very circumstance which constituted the greatest excellence of the invention; viz. that the discovery was of a general principle, and not of a particular organized machine.—The hardship that the discoverer of a principle of such manifest and extensive utility should be deprived, upon a technical objection, of the fruit of his ingenuity, would naturally excite a considerable disposition in his favour, and might possibly give a greater effect to the legal arguments in support of his right, than such arguments could have received, if resting upon their own intrinsic merits, and applied to a less favourable subject; but the views which may be thus excited, by a particular cause, are followed by a general effect.

[No. II.] 8 Anne, c. 19.—An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.

8 Anne, c. 19. See the Case of Miller v. Taylor, in 4 Bur. 2303 to 2418.

'WHEREAS printers booksellers and other persons have of late frequently taken the liberty of printing reprinting and publishing or causing to be printed reprinted and published books and other writings without the consent of the authors or proprietors of such books and writings to their very great detriment and too often to the ruin of them and their families:' For preventing therefore such practices for the future and for the encouragement of learned men to compose and write useful books; May it please your Majesty that it may be enacted; and be

No. II.
8 Anne, c. 19.

it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the tenth day of *April* one thousand seven hundred and ten the author of any book or books already printed who hath not transferred to any other the copy or copies of such book or books share or shares thereof, or the bookseller or booksellers printer or printers or other person or persons who hath or have purchased or acquired the copy or copies of any book or books in order to print or reprint the same shall have the sole right and liberty of printing such book and books for the term of one-and-twenty years to commence from the said tenth day of *April* and no longer; and that the author of any book or books already composed and not printed and published or that shall hereafter be composed and his assignee or assigns shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years to commence from the day of the first publishing the same and no longer; and that if any other bookseller printer or other person whatsoever from and after the tenth day of *April* one thousand seven hundred and ten, within the times granted and limited by this Act as aforesaid, shall print reprint or import or cause to be printed reprinted or imported any such book or books without the consent of the proprietor or proprietors thereof first had and obtained in writing signed in the presence of two or more credible witnesses; or knowing the same to be so printed or reprinted without the consent of the proprietors, shall sell publish or expose to sale or cause to be sold published or exposed to sale any such book or books without such consent first had and obtained as aforesaid: then such offender or offenders shall forfeit such book or books and all and every sheet or sheets being part of such book or books to the proprietor or proprietors of the copy thereof who shall forthwith damask and make waste paper of them; and further, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his her or their custody either printed or printing published or exposed to sale contrary to the true intent and meaning of this Act; the one moiety thereof to the Queen's most excellent Majesty her heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of her Majesty's courts of record at *Westminster* by action of debt bill plaint or information in which no wager of law essoign privilege or protection or more than one imparlance shall be allowed.

After 10 April 1710, the Authors of Books already printed, who have not transferred their Rights, and the Booksellers, &c. who have purchased Copies, shall have the sole Right of printing them for the Term of 21 Years.

And the Authors of Books not printed to have the sole Right of printing for Fourteen Years.

Punishment of Bookseller, &c. printing without Consent of the Proprietor.

II. 'And whereas many persons may through ignorance offend against 'this Act, unless some provision be made whereby the property in every 'such book as is intended by this Act to be secured to the proprietor or 'proprietors thereof may be ascertained, as likewise the consent of such pro-'prietor or proprietors for the printing or reprinting of such book or books 'may from time to time be known;' Be it therefore further enacted by the authority aforesaid, That nothing in this Act contained shall be construed to extend to subject any bookseller printer or other person whatsoever to the forfeitures or penalties (1.) therein mentioned for or by reason of the printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books hereafter published shall, before such publication, be entered in the register book of the Company of Stationers in such manner as hath been usual, which register book shall at all times be kept at the hall of the said company, and unless such consent of the proprietor or proprietors be in like manner entered as aforesaid, for every of which several entries six pence shall be paid and no more; which said register-book may at all seasonable and convenient times be resorted to and inspected by any bookseller printer or other person for the purposes before-mentioned without any fee or reward; and the clerk of the said Company of Stationers shall when and as often as thereunto required give a certificate under his hand of such entry or entries and for every such certificate may take a fee not exceeding six pence.

Copies of Books to be entered before Publication in the Register Book of the Company of Stationers; which may be inspected at any Time without Fee.

(1) An action on the Case may be maintained without an entry at Stationers' Hall.—Beckford v. Hood, 7 T. R. 620.

No. II.
8 Anne, c. 19.

Penalty of the Clerk refusing so to do.

III. Provided nevertheless, That if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries or to give such certificate, being thereunto required by the author or proprietor of such copy or copies in the presence of two or more credible witnesses, that then such person and persons so refusing, notice being first duly given of such refusal by an advertisement in the *Gazette*, shall have the like benefit as if such entry or entries certificate or certificates had been duly made and given; and that the clerks so refusing shall for any such offence forfeit to the proprietor of such copy or copies the sum of twenty pounds, to be recovered in any of her Majesty's courts of record at *Westminster* by action of debt bill plaint or information, in which no wager of law essoign privilege or protection or more than one imparlance shall be allowed.

After 25 March, the Archbishop of Canterbury, &c. to settle the Prices of Books, upon Complaint made that they are unreasonable.

IV. Provided nevertheless and it is hereby further enacted by the authority aforesaid, That if any bookseller or booksellers printer or printers shall after the said five-and-twentieth day of *March* one thousand seven hundred and ten set a price upon or sell or expose to sale any book or books at such a price or rate as shall be conceived by any person or persons to be too high and unreasonable; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of *Canterbury* for the time being the Lord Chancellor or Lord Keeper of the great seal of *Great Britain* for the time being the Lord Bishop of *London* for the time being the Lord Chief Justice of the court of *Queen's Bench* the Lord Chief Justice of the court of *Common Pleas* the Lord Chief Baron of the Court of *Exchequer* for the time being the Vice-Chancellors of the two universities for the time being in that part of *Great Britain* called *England* the Lord President of the sessions for the time being the Lord Justice General for the time being the Lord Chief Baron of the *Exchequer* for the time being the Rector of the college of *Edinburgh* for the time being in that part of *Great Britain* called *Scotland*; who or any one of them shall and have hereby full power and authority from time to time to send for summon or call before him or them such bookseller or booksellers printer or printers and to examine and inquire of the reason of the dearness and enhancement of the price or value of such book or books by him or them so sold or exposed to sale; and if upon such inquiry and examination it shall be found that the price of such book or books is enhanced or any wise too high or unreasonable, then and in such case the said Archbishop of *Canterbury* Lord Chancellor or Lord Keeper Bishop of *London* two Chief Justices Chief Baron Vice-Chancellors of the universities in that part of *Great Britain* called *England* and the said Lord President of the sessions Lord Justice General Lord Chief Baron and Rector of the college of *Edinburgh* in that part of *Great Britain* called *Scotland*, or any one or more of them so inquiring and examining have hereby full power and authority to reform and redress the same and to limit and settle the price of every such printed book and books from time to time according to the best of their judgments and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers printer or printers to award and order such bookseller and booksellers printer and printers to pay all the costs and charges that the person or persons so complaining shall be put unto by reason of such complaint and of the causing such rate or price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury* Lord Chancellor or Lord Keeper Bishop of *London* two Chief Justices Chief Baron Vice-Chancellors of the two universities in that part of *Great Britain* called *England* and the said Lord President of the sessions Lord Justice General Lord Chief Baron and Rector of the college of *Edinburgh* in that part of *Great Britain* called *Scotland* or any one of them by writing under their hands and seals, and thereof publick notice shall be forthwith given by the said bookseller or booksellers printer or printers by an advertisement in the *Gazette*; and if any bookseller or booksellers printer or printers shall after such settlement made of the said rate and price sell or expose to sale any book or books at a higher or greater price than what shall have been so limited

and if altered from the Price the Bookseller set, may order him to pay Costs to the Party complaining.

Penalty on Booksellers selling at higher Rates.

This Clause re-

No. II.
8 Anne, c. 19.

and settled as aforesaid, then and in every such case such bookseller and booksellers printer and printers shall forfeit the sum of five pounds for every such book so by him her or them sold or exposed to sale; one moiety thereof to the Queen's most excellent Majesty her heirs and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered with costs of suit in any of her Majesty's courts of record at *Westminster* by action of debt bill plaint or information, in which no wager of law essoign privilege or protection or more than one imparlance shall be allowed.

pealed by 15 Geo. 2. c. 36.

V. Provided always and it is hereby enacted, That nine copies of each book or books upon the best paper that from and after the said tenth day of *April* one thousand seven hundred and ten shall be printed and published as aforesaid (2.) or reprinted and published with additions shall by the printer and printers thereof be delivered to the warehouse-keeper of the said Company of Stationers for the time being at the hall of the said company before such publication made, for the use of the royal library the libraries of the universities of *Oxford* and *Cambridge* the libraries of the four universities in *Scotland* the library of *Sion College* in *London* and the library commonly called the library belonging to the Faculty of Advocates at *Edinburgh* respectively; which said warehouse-keeper is hereby required within ten days after demand by the keepers of the respective libraries or any person or persons by them or any of them authorised to demand the said copy to deliver the same for the use of the aforesaid libraries; and if any proprietor bookseller or printer or the warehouse-keeper of the said Company of Stationers shall not observe the direction of this Act therein, that then he and they so making default in not delivering the said printed copies as aforesaid shall forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered as also the value of the said printed copy not so delivered; the same to be recovered by the Queen's Majesty her heirs and successors and by the chancellor masters and scholars of any of the said universities and by the president and fellows of *Sion College* and the said Faculty of Advocates at *Edinburgh*, with their full costs respectively.

After 10 April, Nine Copies of each Book shall be delivered to the Warehouse-keeper of the Company of Stationers, for the Use of the University Libraries, &c.

Warehouse-keeper to deliver the Books Ten Days after Demand.

Penalty of Proprietor, &c. not observing the Directions of this Act.

VI. Provided always and be it further enacted, That if any person or persons incur the penalties contained in this Act in that part of *Great Britain* called *Scotland* they shall be recoverable by any action before the court of session there.

Penalties in Scotland how recoverable.

VII. Provided, That nothing in this Act contained do extend or shall be construed to extend to prohibit the importation vending or selling of any books in *Greek Latin* or any other foreign language printed beyond the seas; any thing in this Act contained to the contrary notwithstanding.

This Act not to hinder the Importation, &c. of Books in Greek, &c. printed beyond Sea, &c.

VIII. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done any thing in pursuance of this Act, the defendants in such action may plead the general issue and give the special matter in evidence; and if upon such action a verdict be

General Issue.

(2.) It was ruled in the case of the University of Cambridge *v.* Bryer, E. 317. that the right to their copies attached to all books published, although the work be not entered at Stationers' Hall; and notwithstanding that it seems to be taken for granted, in 15 Geo. 3. c. 54. 41 Geo. 3. c. 137. post, that the provisions only extended to works so entered. The following observations, made in that case, are of great importance and very general application. Lord Ellenborough — "Certainly there is some difficulty in the construction arising out of these statutes—but I think the construction, as it is to be collected from these Acts of the legislature, at subsequent periods, is not sufficiently strong and cogent to overturn what I understand to be the clear distinct sense of the statute of Anne, in which there is nothing ambiguous." Le Blanc, J.—"As the construction of the statute of Anne appears to be clear, I am of opinion, that we ought to abide by it, without being controlled by that misconstruction of it which in latter times seemed to have prevailed. I admit the force of the observations—but here it is to be remembered, that this is not a positive interpretation of a former Act imposed by the Legislature in a subsequent Act, but only by the provisions which the Legislature have made they seem to have apprehended that such was the construction of the statute of Anne."—See Stat. 54 Geo. 3. 156. post.

No. II. 8 Anne, c. 19.

given for the defendant or the plaintiff become nonsuited or discontinue his action, then the defendant shall have and recover his full costs for which he shall have the same remedy as a defendant in any case by law hath.

This Act not to prejudice the Right of the Universities.

IX. Provided, That nothing in this Act contained shall extend or be construed to extend either to prejudice or confirm any right that the said universities or any of them or any person or persons have or claim to have to the printing or reprinting any book or copy already printed or hereafter to be printed.

Actions for Offences against this Act to be brought in Three Months.

X. Provided nevertheless, That all actions suits bills indictments or informations for any offence that shall be committed against this Act shall be brought sued and commenced within three months next after such offence committed or else the same shall be void and of none effect.

After the Fourteen Years, the Right of Printing, &c. to return to the Author for other Fourteen Years.

XI. Provided always, That after the expiration of the said term of fourteen years the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years. (3.)

(3.) No subject ever excited greater discussion than the general question of literary property, as founded upon the principles of the Common Law, and independently of the special protection afforded by this statute. Several injunctions had been granted by Courts of Equity upon the supposition of a perpetual copy-right belonging to authors or their assigns; but none of the suits, in which such injunctions were granted appear to have been brought to a final hearing.

The general question was argued upon a special verdict in the King's Bench, in the case of Tonson *v.* Collins, 1 Bl. Rep. 301. 321. by Mr. Wedderburn (afterwards Lord Loughborough) for the plaintiff, and Mr. Thurlow (afterwards Lord Thurlow) for the defendant; and upon the second argument by Mr. Blackstone (afterwards Sir Wm. Blackstone) for the plaintiff, and Mr. Yates (afterwards Sir Joseph Yates) for the defendant, with respect to the copyright in the Spectator. The inclination of the court was in favour of the right, and they were prepared to give judgment accordingly; but having received information that, although the argument was conducted *bonâ fide* by the counsel, it was a collusive proceeding between the parties for the purpose of obtaining a judgment which might be set up as a precedent against third persons, they refused to pronounce any decision. The following is an extract from the argument of Mr. Thurlow—"It will be difficult to confine this merely to books, and not to extend it to other inventions. A learned author (Bishop Warburton) has endeavoured at it, and brangled it and made sad stuff of it—he attempts a distinction between the labours of the head and of the hand; but in some machines the labour of the head is greater than that of the hand. Sir Isaac Newton had no greater property in his principia than Lord Orrery had in his machine. If the labour of the head gives the right, the property is just the same; and it is possible that the invention of the mouse-trap cost its author the same labour of the head that the orrery did its noble contriver; so that this ground of property depends entirely upon the difference of heads."

[3] The question was again brought before the court in the case of Millar *v.* Taylor, 4 Bur. 2303. (with respect to Thomson's Seasons,) and occupies above a hundred pages of the volume. Upon this occasion there was a difference of opinion in the court, being the first instance of it which had occurred since the appointment of Lord Mansfield, a period of between twelve and thirteen years. Lord Mansfield, and Aston and Willes, J. were in favour of the right, and Sir Joseph Yates against it. The case may be recommended to perusal, as forming a peculiarly able specimen of judicial discussion; as containing an interesting historical view of the subject; and likewise as illustrating several very important principles of jurisprudence of general application.

Judgment was of course given for the plaintiff, according to the opinion of the majority of the judges; but a few years afterwards the general question arose before the House of Lords, in the case of Donaldson and Beckett, when it was finally determined that an author has no property in his copyright, otherwise than according to the terms of the statute. The majority of the judges were of opinion that there was such a right at common law—seven being of that opinion, and four of the opposite opinion; but there was an equal majority of opinion that that right was restrained, impeached, or taken away by the statute. Lord Mansfield declined speaking. Lord Camden and the Lord Chancellor (Bathurst) were of opinion that there was not any right

independently of the statute. The answers of the different judges, with their reasons are briefly stated in the *Gentleman's Magazine* for 1775. The opinion of Lord Chief Justice De Grey is stated rather more at length than the others. This, with the speech of Lord Camden, I inserted in the view which I published some time ago of the decisions of Lord Mansfield, thinking, that from their merit, they were particularly entitled to attention; and I hoped to have given them a wider circulation amongst professional readers than they would otherwise have had, a hope which has in no degree been justified by the event.

[4] Notwithstanding the determination against the general question of a perpetual copyright, there are some subjects in respect of which such right is still supported, as resulting from the prerogative of the Crown. These are bibles, prayer-books, and statutes. A discussion of the nature and foundation of this right will, I am aware, be rather matter of curiosity than one of which the result can be applicable to any practical purpose; but which, I apprehend, will certainly lead to the conclusion, that such right could have had no legitimate origin upon any principles of the common law at present acknowledged. The preceding number of this class exhibits a view of the law, at the time of its passing, with respect to the great extent of the prerogative exercised by the Crown in the granting patents for monopoly. Upon the restriction of that right, with respect to other subjects, an exception was made of the case of printing, as to which patents were left to be of the like force and effect as if the Act had never been made; but it will not be contended that, by force of this reservation, the Crown has now the prerogative of granting an unlimited and exclusive right with respect to any publication or kind of publication selected at pleasure. The power formerly assumed upon this subject was carried to a very extravagant length indeed. Sir Joseph Yates, in delivering his opinion in the case of Millar *v.* Taylor, observed, that "different patents, which had been cited from Ames's Typographical Antiquities, were too gross to be mentioned, but they excluded all idea of proprietary right;" amongst them were patents for all maps and charts of England, the printing of music, all things printed on one side of a sheet of paper, or any part of a sheet, provided the other side was white paper. He also traced the manner in which the subject was affected by the connection between the Star Chamber and the Stationers' Company, and noticed the effect of the licensing Acts. He observed, that all the patents were enormous stretches of the prerogative to raise a revenue, and to gratify particular favourites, without the least regard to authors and new compositions. The rest of the authorities cited were founded on political views, to prevent, as they declare, heretical and seditious publications; and the order of the Star Chamber, that all books should be entered in the register of the Stationers' Company, was to prevent improper publications. The innocence or delinquency of the book, and not any private property in the authors, were the objects of inquiry. Speaking of the nature of prerogative copies, he said, "The right of the Crown to the sole and exclusive printing of what is called prerogative copies, is founded on reasons of religion or state. The only consequences to which they lead are of a national and public concern, respecting the established religion or government of the kingdom, and bear no analogy to the case of private authors.—Lord Mansfield considered the existence of prerogative copies as merely a modification of the general and common right of literary property; and from the cases which had been decided in favour of these particular copies he inferred, as a necessary consequence, the existence of the general right. In the course of his judgment he discussed at length the position that Crown copies were founded solely on property, and said, that in Basket's case, (Basket *v.* the University of Cambridge, 1 Bl. 105. 2 Bur. 661. as to the right of printing Acts of Parliament,) they had no notion of the prerogative of the Crown over the press, or of any power to restrain it by exclusive privileges, or of any power to controul the subject matter upon which a man might write, or the manner in which he might treat of it. They rested upon property from the King's right of original publication. The copy of the Hebrew Bible, the Greek Testament, or the Septuagint, does not belong to the King—it is common—but the English translation he bought, and therefore it has been concluded to be his property. His power rests in property. His whole right rests on the foundation of property in the copy by the common law. What other ground can there be for the King's having a property in the Latin grammar, which is one of his ancientest copies, than that it was originally composed at his expence?—Whatever the common law says of property in the King's case from analogy to the case of authors must hold conclusively in my apprehension with respect to authors.—From the manner in which this very eminent judge treats the case of prerogative copies, as identified with the general law of copyright, it would seem manifest that, after the latter had been negatived by the resolution of the House of Lords, he must (if acting consistently) have held that the non-existence of the former was as a necessary consequence involved in the decision.

No. II. 8 Anne, c. 19.

Lord Chief Justice De Grey, upon this part of the subject, said "What the common law now must have been so three hundred years ago when printing was invented: no traces of such a claim (speaking of literary property in general) are to be met with prior to the Restoration—very few cases of this kind happened in Charles the Second's time, or before the licensing Act, and those few were determined upon the prerogative right of the Crown. The executive power of the Crown drew after it this prerogative right, which extended to all Acts of Parliament, matters of religion, and also of state. The case of Basket and the University of Cambridge, which was a late case of the kind, appeared upon the pleadings to be a question arising between two parties who claimed under concurrent and inconsistent grants of the Crown. My late honourable and learned friend, Mr. York, who argued that case, endeavoured to shew that his client's right might arise from the power of the Crown; and, to illustrate his argument, said it might perhaps be property founded in prerogative; a language, however allowable for counsel, not admissible by or intelligible to a judge." The following are Lord Camden's observations, in alluding to that part of the argument for the general right which was founded upon the existence of prerogative copies:—"I come now to consider on what foundation stand the prerogative copies, and these were in fact cases between co-patentees, (for I must consider the Stationers' Company itself as a patentee of the Crown,) and no authorship right occurs here. The right in the Crown is supposed to proceed either from purchase or contract, and our law argues from principles, cases, and analogy; but not a word of this in the judgment of the Court, but the arguments of counsel are adduced to prove the point. The argument of counsel is a sorry kind of evidence indeed; in most cases it would be dangerous to rely on it, but here it is such stuff as I am ashamed to mention. You have them at length in Carter's Reports. First, it is put on the topic of prerogative, then of ownership—1 Henry VI. brought over the printers and their presses; ergo, say the counsel, he has an absolute right to the whole art, and all that it can produce. 2nd. Printing belongs to nobody, and what belongs to nobody is of course the King's. 3d. The King pays his judges; ergo, he purchases that right for a valuable consideration. 4th. He paid for the translation of the Bible, therefore forsooth he bought a right to sell Bibles. Away with such trifling.

[5] Such were the views which were taken upon this part of the subject on discussing the important general question of literary property; and it seems almost impossible to doubt that if, recently after the final decision of that question, and before the modern invention of Acts of Parliament lost by time or accident, the bull had been fairly been taken by the horns, and the question of prerogative copies boldly and openly met, the great men whose opinions have been cited would have held, that there was no foundation of legal right in such a claim. It might be reasonably urged, that any part of the law not founded on immemorial usage, or deduced from the general nature of the subject, could only proceed from legislative authority, and that the assumption of any such right was wholly without the province of either of the executive or judicial powers—no right, as founded upon the nature of the thing, could be applied to the case of prerogative, which would not as fully have supported the exploded right of general literary property. But for a considerable time after the introduction of the art of printing, to have challenged a right which the advisers of the Crown had thought proper to assert, would not have been safe in an individual, much less would the giving countenance to such a challenge have been prudent in a judge. After the Revolution and Act of Settlement had placed upon their proper footing the rights of the subject and the independence of the judges, the prerogative which had been before assumed was acquiesced in without taking the trouble of questioning the legitimacy of its origin, or the soundness of its foundation. The rival claimants to the benefit of the supposed prerogative right were of course not very likely to urge an objection which would strike at the root of their own asserted property; but however unstable such property might have been, if it had been attacked in a proper manner, and at the proper time, and notwithstanding it is regarded as a maxim of the law, that *Quod ab initio non valet tractu temporis non convalescit*; I think it is very manifest that the question could not now be agitated with any prospect of success.

[6] The right to the exclusive printing of Almanacks continued to be insisted upon by the Universities and Stationers' Company, as matter of prerogative, after the final decision of the general question of literary property. The origin of this property is, in 1 Mod. 256. put upon the following curious reasons:—Property in Almanacks are said to be the King's, 1st. because derelict; 2ndly, as prerogative copies, because they regulate the feasts of the church. Mr. Carnan, a bookseller, had the spirit to resist this absurd and ridiculous claim, and obtained a decision of the Common Pleas in his favour upon a case sent from the Court of Exchequer upon a bill for an injunction. Soon after the decision, Lord North (then Prime Mini-

No. II. 8 Anne, c. 19.

ster, and Chancellor of the University of Oxford), brought a Bill into Parliament for giving to the Stationers' Company and the Universities the right, the previous existence of which had been judicially negatived, under the fallacious title of a Bill to REVEST the monopoly in these bodies.

Mr. Carnan was admitted to be heard by counsel against the bill; Mr. Erskine who had then recently entered upon his splendid career of eloquence, was the counsel resorted to, and his address upon that occasion is the second in order of date in the valuable collection of his speeches lately printed, and is well entitled to attention, both from the justness of its reasoning and the manly constitutional freedom of its principles.

[7] The prerogative right, with respect to Bibles and Prayer Books in favour of the Universities and the King's Printer, is the subject to which I shall now more particularly refer, and which has been regarded in a very different manner by the late Lord Clare as Chancellor of Ireland and the Court of Chancery, followed by the decision of the House of Lords in England. Upon application for an Injunction from printing an edition of the Bible in numbers with prints and notes, Lord Clare asked if the validity of the Patent had ever been established at law, and said he did not know that the Crown had a right to grant a monopoly of that kind. In the course of the discussion he made the following observations—"I can conceive that the King, as head of the Church, may say, that there shall be but one man who shall print Bibles and Books of Common Prayer for the use of churches and other particular purposes; but I cannot conceive that the King has any prerogative to grant a monopoly as to Bibles for the instruction of mankind in the revealed religion, if he had, it would be in the power of the patentee to put what price he pleased upon the book, and thus prevent the instruction of men in the Christian Religion." "If ever there was a time which called aloud for the dissemination of religious knowledge it is this, and, therefore, I should with great reluctance decide in favour of such a monopoly as this, which must necessarily confine the circulation of the book." "As to very particular purposes, I have no doubt that the patentee has an exclusive right to print Bibles and Prayer Books; but, unless I am bound down very strictly, I will not determine upon motion that no man but the King's Printer has a right to print such works as these."

"In giving judgment, he said, that the case, which had been mentioned, seemed to intimate that it never had been solemnly decided how far the prerogative extends to give a sole and exclusive right of printing Bibles. Many of the old cases upon the subject were determined upon the principle of the Licensing Act;" and the motion was refused.—Grierson *v.* Jackson, Ridgeway's Rep. 304.

[8] A very different view was taken of the subject, seven years afterwards, in the case of the Universities of Oxford and Cambridge *v.* Richardson, 6 Vesey, 689; in which an Injunction against the King's Printer in Scotland, who had a patent for the sale of Bibles, printing or selling them in England, was granted upon motion and before the hearing, upon the ground that possession, under colour of title, was sufficient to injoin and to continue the Injunction till it was proved at law that it was only colour and not real title, a doctrine which I have adverted to in the note on the preceding number with respect to patents, and shall again have occasion to mention. In the course of this case it appeared, that, in the year 1718, Sir Joseph Jekyll, as Master of the Rolls, had granted an Injunction in a similar case, which was supported upon appeal before the Lord Chancellor; and also, that a decree of the Court of Session had, in the year 1717, been reversed by the House of Lords in favour of the right of the King's printer in England, confining the right of the Scotch printer to Scotland. With respect to the precedent of the injunction, it is clear that there had been abundance of injunctions before upon private copyright, until the claim was finally put an end to by the decree of the Lords; and questions between rival patentees are not the most probable method of bringing into fair discussion the general rights of the subject to resist the claim of prerogative, root and branch. The Lord Chancellor, in his judgment, said, "My opinion is, that the public interest may be looked to upon a subject, the communication of which to the public, in an authentic shape of a matter of right, is also a matter of duty in the Crown, which are commensurate. 'It is not accurate to say, these privileges are not granted for the sake of unlimited sale, and for the sale of the Universities, &c. They are, to a certain degree, like all other offices, calculated for that sort of advantage which will secure to the public the due execution of the duty; upon this principle proceed all the branches of our constitution, (which does not adopt the wild theories that require the execution of a duty without a due compensation,) that the duty is well secured in one way by giving a responsibility, in point of means, to the person to execute it. The reasoning which affects to depreciate monopoly will perhaps tend to create it.' There certainly is no great risque that false copies of the Bible

No. II. 8 Anne, c. 19.

would get into general circulation by an unlimited right of printing them. We do not find it materially the case in other works; and there are, I conceive, very few persons indeed who would admit that the beneficial circulation of any commodity in general, or of these writings in particular, can be promoted by means of an exclusive monopoly; and the principal object, both of the right and the duty, with respect to the particular subject, appears to be the benefit arising to the privileged individuals.*

[9] The question was afterwards brought before the House of Lords, and the injunction against the Scotish printer confirmed. I observed, in the account of the proceedings which appeared at the time in the public prints, that one part of the argument of the counsel for the defendant was proceeding to question the general right of the plaintiffs, which was stopped by an intimation that the case of their clients did not consist in disputing the right of the plaintiffs, but in asserting a peculiar right consistent with it in themselves. This hint would of course have its due effect in silencing the counsel upon a topic in which, if they had been successful, they would have cut their own clients' throats. And thus, I apprehend, that the law upon the question will be held to have been finally settled against the common liberty of the subject by this decree between the rival printers deriving their title from the very questionable prerogative of the Crown.

The exclusive right of printing Acts of Parliament and other matters of State has been looked upon more favourably than the other branches of the prerogative in question. Lord Clare, in the case of Grierson *v.* Jackson, said, he could very well conceive that the King should have a power to grant a patent to print the Statute Books, because it was necessary that there should be a responsibility for correct printing, and because the copy can only be had from the Rolls of Parliament, which are within the authority of the Crown; and Mr. Erskine, in his speech already alluded to, admits the right in the strongest terms. Notwithstanding the argument *ad verecundiam*, which may be so strongly urged upon the subject, I am by no means satisfied, that the legal right in this respect, considered with relation to its origin, rests upon any juster principles than the exploded rights respecting the Latin Grammar and Almanacks. Previous to the invention of printing, the usual course was to send the Statutes to be proclaimed by the Sheriffs; then, as now, every subject was bound to have taken notice of the contents of them at his peril; and there is not the slightest trace of an authority for a restriction of the employment of making manuscript copies, which, to the lawyers and judges of that day, must have been essentially necessary, although, in case of any question arising judicially with respect to the contents of a Statute, the original record, or some duly authenticated copy, would of course be resorted to; and I cannot discern any legal principle upon which a discovery, that had the effect of facilitating the multiplication of copies, could limit and restrain that common right of producing such copies which previously existed. In fact this authority, originally claimed by the Crown, had no particular relation to the benefit of affording to the public a more accurate information upon the ordinances of Parliament, than could otherwise have been obtained, but was merely one amongst many other instances of the application of that general overwhelming system of monopoly, which is now reduced to very circumscribed limits, and supported only upon grounds and principles that in former times were never thought of.

[10] Although there is no reason to complain of the individuals in which the exclusive right is now vested, I think it evident that an exclusive right of promulgating statutes is in its nature much more calculated to retard than to promote a general diffusion of the knowledge of the laws, as there is no other tie than that of mere prudence against the publishing those Acts, which are of general utility, in conjunction only with many others that would be totally useless, and of including in the collection every turnpike and canal Act that has been ever passed. The magnitude of the collection, which is actually published, is a very serious object in respect of expence to a person newly entering on the practice of the profession, and to gentlemen acting in the commission of the peace, and the great disproportion in modern legislation between the total bulk of the Statutes and the number of those which have relation to the general knowledge and practice of the law is felt by the profession, and not unfrequently complained of from the Bench as a serious inconvenience. In the attempt which is made in the present work to remedy that inconvenience, I had originally conceived that the selection and arrangement, which are the principal features of the work, might have been deemed sufficient to protect the attempt from the imputation of invading the right, which it would be unavailing to dispute; and to that selection and arrangement the plan of the work was originally

* See some important observations upon the difference between a free press and a monopoly in Erskine's speech for Carnan.

confined; but, upon further consideration, I did not feel bold enough to encounter the risque with which such an attempt would have been attended, and being strongly impressed with the conviction that the undertaking, if fairly executed, would be productive of considerable utility; I have devoted much time and attention to the formation of the numerous notes which now accompany it, and which I hope will have the effect, not only of supporting its legality, but of increasing its utility, although the preparation of them has very considerably retarded its appearance.

If any apology should be thought necessary for the length of a discussion which will probably be considered immaterial, as affecting its immediate objects, and as applying the test of argument to a question which may be probably concluded by authority, that apology will, I hope, be found in the importance of some of the principles with which the discussion is connected, and a steady attention to which, in respect of questions still within the reach of argument, is essentially conducive to the preservation of some of the highest excellencies in the law and constitution of the country.

[11] It seems to have been agreed, that the privileged copies may be printed by others than those having the patent right, if accompanied by *bonâ fide* notes. In the case of Baskett v. Cunningham, 1 Bl. Rep. 370. the defendant, in conjunction with several booksellers, was publishing, in weekly numbers, a Digest of the Statute Law, methodized under alphabetical heads, with large notes from Lord Coke and other writers on the law. He had contracted with Strahan and Woodfall, the proprietors of the patent for printing law books, to print this work, and it was printed at their press. Baskett, the King's printer, (whose patent extended to all statutes,) filed a bill for an injunction. It was urged, that the book was not within the meaning of the letters patent, being a work of labour and industry, and the method entirely new; and the Lord Chancellor was of opinion, that the work was entirely within the patent of the King's printer, and that the notes were merely collusive. But he would not interfere between the two contending patents, in the summary method of injunction, but left them to adjust their respective rights in the course of law. He therefore ordered an injunction to issue to restrain the proprietors from printing at any other than a patent press, which, as Woodfall and Strahan were secretly in league with Baskett, and were at that time jointly concerned in a new edition of the Statutes, was equivalent to a total injunction, the law printers finding means to elude their contract with Cunningham.

In what respect the notes in that case were collusive does not appear; but, according to the present state of the law, a general patent for printing law books would be only laughed at. There seems to be very little reason to suppose, that a digest of the substance and effect of the statute law would be considered, by any tribunal, as the subject of a legal monopoly. Mr. Reeves, one of the royal patentees, and the writer of several learned juridical publications, in the Preface to his edition of the Bible, (divided into sections,) observes, that all the authorized bibles published by the King's printer and the Universities are wholly without explanatory notes. These privileged persons have confined themselves to printing the bare text, in which they have an exclusive right, forbearing to publish it with notes, which it is deemed may be done by any of the King's subjects as well as themselves. He subjoins to this passage a note in the following terms:—"I mean such notes as are *bonâ fide* intended for annotations, not the pretence of notes which I have seen in some editions of the Bible and Common Prayer book, placed there merely as a cover to the piracy of printing upon the patentees, as if fraud could make legal any thing that was in itself illegal. In some of these editions the notes are placed purposely to be cut off by the binder."

The admission of Mr. Reeves, considering his legal knowledge, his interest in the subject, and the turn of his political opinions on the subject of prerogative, seem sufficient authority for the general right of the subject, with respect to the publication of the privileged copies having the accompaniment of *bonâ fide* notes.

The writers of legal publications on any detached subject, as the Bankrupt Laws, the Poor Laws, the Game Laws, have never been molested since the time of the great discussion upon the subject of Copywright, in printing at large the statutes applicable to those respective subjects.

[12] "Soon after the Restoration, an Act of Parliament having prohibited the printing of law books without the licence of the Lord Chancellor, the two chief justices, and the chief baron, it became the practice to prefix such a licence to all Reports published after that period, in which it was usual for the rest of the judges to concur, and to add to the imprimatur a testimonial of the great judgment and learning of the author. The Act was renewed from time to time, but finally expired in the reign of King William. But the same form of licence and testimonial continued

No. II. 8 Anne, c. 19.

in use until not many years ago, when, as the one had become unnecessary, and the other only a general commendation of the writer, and no voucher for the merit of the work, the judges (I believe) came to a resolution not to grant them any longer, and accordingly the more recent Reports have appeared without them."—Preface to Douglas' Reports. Sir James Burrow offers an apology for publishing his Reports without an imprimatur, and says he knows it is a contempt of that Court to publish their proceedings, and that it is against a standing order of the House of Lords to publish proceedings there, upon appeals or writs of error. He also adverts to the origin and continuance of the imprimatur, in the same manner as it is stated by Mr. Douglas—and adds, that he has been assured that some, who were possessed of judicial offices, had declared that they would never sign one, because it hangs out false colours.

The idea of such publication being a contempt of Court would probably give some assistance to the unfounded claim of a patent right for the exclusive printing of law books, since as long as such patents were granted, and the validity of them not contradicted by any judicial determination, the necessity of the licence might come in aid of the monopoly. I have met with an instance, which I cannot particularly refer to, of one of the Courts disapproving the citation of a case from modern Reports, not on the ground of their inaccuracy, but because they had been published without the authority of the judges. The prohibition by the House of Lords to publish the Reports of their decisions, (at the same time taking no care to furnish any authentic information upon the subject themselves,) seems founded upon very extraordinary policy, as keeping the public in ignorance of those adjudications by which they are most peculiarly bound; but this ground of contempt has long ceased to be the object of their animadversion, and Brown's Parliamentary Cases, with the recent Reports of Mr. Dow, are suffered to pass as unmolested as the diurnal accounts of the debates in Parliament. Indeed, I apprehend that the general monopoly of such publications would not be of sufficient pecuniary value to form a very probable subject of litigation; and the practical application of the doctrine of contempt has been much relaxed since about the commencement of the present reign, when the mention, in print, of the name of a peer, upon any accidental subject, (for instance, that of his fish ponds had been robbed, which I have heard stated, as a case that appears in print, to have really occurred,) was taken up as a contempt of the House. The ridiculous extent to which this practice was carried by the late Lord Marchmont, was probably the reason of its falling into disuse.

[13] But a remnant of this practice still prevails, where the temporary interest of the subject matter would lead to a competition of publication, and a monopoly may be attended with some advantage; the case of trial by impeachment or otherwise, before the House of Lords: and the right of exclusive publication in the person printing under the authority of the House, has been supported to a certain extent, as one not having merely the summary protection of that assembly as a subject of contempt, but as giving a property entitled to protection in the ordinary course of law. Lord Bathurst having, in a case of Bathurst *v.* Kearsley, granted an injunction in favour of the printer under his authority of the trial of the Duchess of Kingston; Lord Erskine, upon the precedent of that decision, ordered an injunction until the hearing, in the case of Gurney *v.* Longman, 13 Vesey, 493. with respect to the trial of Lord Melville, at the same time intimating that, unless he had a strong impression that at the hearing he should continue of the same opinion, and should grant a perpetual injunction, he would not grant an injunction then: but on the day of his quitting office as Lord Chancellor, he desired that it should be understood that he had not delivered any judgment further than by granting the injunction until the hearing upon the precedent of the former case of Bathurst *v.* Kearsley, and should therefore consider the question as open in any future stage. A demurrer was afterwards put in, but was never argued, a compromise taking place. The argument of counsel upon this case throws a considerable light upon the general subject. The counsel for the defendant admit that right of monopoly in prerogative copies, with respect to which I have manifested so strong an impression as militating against some important legal principles, but this admission, which did not immediately affect the interest of their client, leaves the general argument upon the subject to stand on its original merits.

[14] The Court of Chancery also exercises an authority with respect to restraining the publication from manuscripts of persons deceased. In the case of the Duke of Queensbury *v.* Shebbeare, before Lord Hardwicke, as cited by Willes, J. in Millar *v.* Taylor, 4 Burr. 2330. an injunction was granted against printing the Second Part of Lord Clarendon's History. Lord Clarendon, they say, let Mr. Francis Gwynn have a copy. His son and representative insisted that he had a right to print

and publish. The Court were of opinion, that Mr. Francis Gwynn might make every use of it, except the profit of multiplying in print. It was to be presumed (as Willes, J. observes) that Lord Clarendon never intended that when he gave him the copy. The injunction was acquiesced under, and Dr. Shebbeare recovered, before Lord Mansfield, a large sum against Mr. Gwynn, for representing that he had a right to print. Mr. Justice Willes adduces this case, as an argument for the general right of literary property, in which he is followed by Lord Mansfield, who observes, that Mr. Gwynn was entitled undoubtedly to the paper of the transcript of Lord Clarendon's History, which gave him the power to print and publish it, after the fire at Petersham, which destroyed the original. But at the distance of near a hundred years, the copy was adjudged the property of Lord Clarendon's representatives, and Mr. Gwynn's printing and publishing it without their consent, was adjudged an injury to that property, for which in different shapes he paid very dear; and after mentioning the case of Pope and Curl respecting the publication of letters, which will be presently referred to, Lord Mansfield puts a string of questions, tending to shew, that all the objections which had been urged against a general and unlimited copyright after publication, would equally apply to the case of an unpublished manuscript; as whether the right to prohibit the publication was real or personal, whether it was assignable, whether it could be taken in execution? could it be vested in the assignees of bankrupts? evidently intimating that the two cases stood upon an equal footing, and that if the one was negatived, there was no legal foundation for the other. In the review of the decisions of this eminent judge already alluded to, it occurred to me to observe, that a full consideration of the consequences of those questions might perhaps lead to a different conclusion, with respect to unpublished manuscripts, from that which is the foundation of several decisions in Chancery. During the life of a writer the publication may be deemed a personal injury, but after his death several material questions may arise with respect to the claim of his representatives. It is taken for granted, in Millar and Taylor, that the injunctions were founded upon clear property. An executor can only bring an action on the case for some damage, which reduces the assets, and to the extent of which assets he is accountable. But the right to prevent any person, having a manuscript of the deceased, from publishing it, is no property which can constitute part of the assets, in respect of which alone he represents the deceased. The same observation will, in some degree, apply to the heir. Besides which, this kind of property, is no wise analogous to any hereditament recognised by the law. The interpositions appear to be on behalf of the *family* of the writer. But it seems a legal anomaly to take notice of the family of a deceased person, in any other manner than as connected with the property, which constitutes real or personal assets. If ever the question should come solemnly before a court, great respect would be due to the illustrious characters whose decisions were impeached; but if the object of the suit appeared upon examination to be destitute of legal principle and analogy, the authority of those decisions would probably give way. Lord Mansfield, to support the perpetual right to works published, argues, that an unpublished manuscript cannot be distinguished from them; and may not that argument now be applied to the ultimate decision of the House of Lords, against a perpetual common law right of publications, and extended to manuscripts?

I do not very well understand upon what principle the action could have been supported against Mr. Gwynn, unless he had expressly represented to Dr. Shebbeare, that he had an actual consent to publish the MS. for if the purchase was made generally, the seller could not be deemed to warrant the enjoyment of it in a particular manner, against the mere common course and operation of the law, as then understood and administered.

[15] The Court of Chancery interposed in the cases of Mr. Webb and Mr. Forrester, cited Ambler, 695. the former of whom had his *Precedents of Conveyancing* stolen out of his chambers and printed; and the latter had his notes copied by a clerk to the gentleman to whom he had lent the notes, and which were printed, and the parties were restrained by injunction from printing and publishing them. In Macklin *v.* Richardson, Ambler, ib. the defendant had employed a short-hand writer to take down the Farce of *Love à la Mode* upon its performance at the Theatre, and inserted one act in a Magazine, and gave notice that the second act would be published in the Magazine of the following month. Upon an application to Lord Camden for an injunction, he directed the case to stand over until that of Millar and Taylor, which was then depending, should be determined; and, after the determination, the injunction was by the Lords Commissioners, Smythe and Bathurst, made perpetual. Smythe, L. C. said, it has been argued to be a publication by being acted, and therefore the printing is no injury to the plaintiff, but that is a mistake; for, besides the advantage of the performance, the author has another source of pro-

No. II. 8 Anne, c. 19.

fit from the printing and publishing, and there is as much reason that he should be protected in that right as any author. Bathurst—"The printing it before the author is doing him a great injury." It does not distinctly appear whether this decision was influenced by the opinion of the general right of literary property having been settled by the decision in Millar and Taylor, or whether the restraining the publication of the farce, not then published by the author, was upon the ground of a distinct and independent equity, applicable only to publications not printed. In Coleman *v.* Wathen, 5 T. R. 245. it was determined that an action at law cannot be maintained for representing on the stage the production of another person as not being a publishing within the statute.

[16] In Pope *v.* Curl, 2 Atk. 341. Lord Hardwicke supported an injunction by Pope against the Defendant's vending a book intitled "Letters from Swift, Pope, and others." His Lordship observed, that the first question was, whether letters were within the grounds and intention of the Statute, 8 Anne, and said, he thought it would be extremely mischievous to make a distinction between a book of letters which came out into the world, either by the permission of the writer or the receiver of them, and any other learned work. The same objection would hold against sermons which the author may never intend should be published, but are obtained from loose papers, and brought out after his death. Another objection has been made, that when a man writes a letter, it is in the nature of a gift to the receiver; but I am of opinion that it is only a special property in the receiver, possibly the property in the paper may belong to him, but this does not give a license to any person whatsoever to publish them to the world, for at most the receiver has only a joint property with the writer." It is observable, that this case professes to proceed partly upon the statute, which gives only a right for fourteen years from the day of first publishing, and consequently has no relation to the case of unpublished letters; and supposing there to be a joint property in letters of correspondence between the sender and receiver, it does not seem by any means necessarily to follow that one of several joint owners may not exercise the right of publication. Supposing different persons to be possessed of manuscript copies of a given composition, in which no other has a paramount claim to restrain the publication, it cannot be supposed that any of them individually could prevent the publication by the others.

[17] In Thompson *v.* Stanhope, Ambler, 737. it appears that the executors of Lord Chesterfield obtained an injunction till the hearing against the widow of Mr. Stanhope, with respect to the publication of his lordship's letters to her husband, and of characters of different persons, the originals of which characters she had delivered to Lord Chesterfield, who said he meant to burn or destroy them, and, upon her offering to give up the letters, declined taking or looking at them. Lord Apsley, according to the report, recommended it to the executors to permit the publication in case they saw no objection to the work upon reading it and having copies delivered to them. In 2 V. & B. 21. it is said, that by the register's book it does not appear that an injunction was actually granted. It is well known that the publication did appear, but whether upon the judgment of the executors that they saw no objection to the work, or upon what other ground we are not informed.

In the late case of the Earl of Gramond *v.* Dunkin, 1 Ball and Beatie, 207. the executors of Lady Tyrawley obtained an injunction in the first instance against the defendant publishing letters to Lady Tyrawley from different correspondents, and which he had got possession of by being permitted to reside in her house, and continuing to do so after her death.

The last case upon the subject is Lord and Lady Percival *v.* Phipps and Mitford, 2 V. and B. 19. The Bill stated, that Lady Percival had written to Mitford several letters of a private nature, in confidence that he would not part with them, nor publish or permit them to be published, but that he had communicated them to Phipps, who had published one, and announced an intention to publish others, and prayed an injunction. Phipps by his answer stated, that he had published in a newspaper certain intelligence as communicated to him by Lady Perceval for that purpose, and disavowed by her, and that the letters in question were written to Mitford upon similar subjects, materially tending to shew that the intelligence did come from Lady Perceval, and that as she had denied being privy to the former publication, the character of Phipps and the value of his paper were in danger of falling into discredit with the public. The vice-chancellor dissolved the injunction leaving the plaintiffs to do what they could at law.

In the view which he took of the subject he observed, that this equity stands not upon breach of confidence or the injury to the feelings of the parties, but upon this broad basis, the invasion of literary property. The following passage from the judgment is very material:—

"This is the naked case of a bill, certainly, to prevent the publication of private

letters; not stating the nature, subject, or occasion of them, or that they were intended to be sold as a literary work for profit; or are of any value to the plaintiff. Upon such a case it is not necessary to determine the general question, how far a court of equity will interpose to protect the interest of the author of private letters. The interposition of the Court in this instance certainly is not a consequence from the cases that were cited; upon which I shall merely observe, that, though the form of familiar letters might not prevent their approaching the character of literary work, every private letter, upon any subject, to any person, is not to be described as a literary work, to be protected upon the principle of copy-right. The ordinary use of correspondence by letters is to carry on the intercourse of life between persons at a distance from each other, in the prosecution of commercial or other business; which it would be very extraordinary to describe as a literary work, in which the writers have a copyright. Another class is the correspondence between friends or relations upon their private concerns; and it is not necessary here to determine, how far such letters falling into the hands of executors, assignees of bankrupts, &c. could be made public in a way that must frequently be very injurious to the feelings of individuals. I do not mean to say, that would afford a ground for a court of equity to interpose to prevent a breach of that sort of confidence, independent of contract and property."

[18] A case was mentioned as having recently occurred of an injunction restraining the publication of letters from an old lady under the influence of a weak attachment to a young man. The case had been heard privately before the Lord Chancellor; but the defendant in that case, as stated by the Vice-Chancellor in his judgment, had received a sum of money not to publish the letters, and the attempt to publish them was therefore a violation of contract.

With respect to these private hearings it has lately been declared, in allusion to some commentaries in the public prints, that they never take place but at the request of both parties. I am very far from being clear that this circumstance renders them entirely unobjectionable, because it is of great importance that decisions which, as matter of precedent, are to give the law to the country at large, should be promulgated in such a manner that they may be generally known and acted upon, and not kept up as a kind of pocket-pistol law, ready to be let off as may happen to suit the purposes of the few individuals who, from the accidental connection with a particular case, may happen to get possession of it.

[19] In Hogg *v.* Kirby, 8 Vesey, 215. an injunction was granted against the defendant from publishing a number of a Magazine, which was so printed as to appear a continuation of a work published by the plaintiff, and from selling, &c. any other work or publication as or being a continuation of the plaintiff's work, or of the defendant's work, which had been published as such continuation. The case was partly argued upon the ground of a breach of contract by the defendant, who had been the original publisher of the work of the plaintiff; but the Court seemed to admit the general principle, that a person cannot publish a work professing to be and handed out to the world as the continuation of a work published by another. It was said, in argument, to have been determined, that property exists in a newspaper, and that an action lies for publishing under the same title.

[20] With respect to subjects more immediately depending upon the statute, and not referred to in the preceding part of the note, it was decided in Bach *v.* Longman, Cowp. 623. that the protection extends to musical compositions by force of the words *books and other writings*. "It is not," said Lord Mansfield, "confined to language or letters—music is a science, it may be written, and the mode of arranging the ideas is by signs and marks, and the right may subsist as to a single sheet of music."—Clementi *v.* Goulding, 11 East. 244. and cases there cited; and it seems that the words of a song applied to an old tune, and published with it on a single sheet of paper, are privileged as a book—Hime *v.* Dale, 2 Campb. 29. *n.* And in Storace *v.* Longman, 2 Campb. 27. *n.* Lord Kenyon held, that the right of the author was not divested, by shewing that the song was written to be sung at the Opera, and that all compositions so performed were the property of the house, not of the composer; but, query, as to the accuracy of this opinion, as nothing is more usual than for an author to dispose of MS. and copyright, and a general usage and understanding upon the subject may be evidence of such a disposition.

[21] It is often a matter of consideration whether the work, represented as an infraction of copy-right, is or is not substantially the same with that for which the property is claimed: where the subject will not admit of much variety, the original labour of one person will produce the same results with the original labour of another; but even in these cases, if the work is made out to be merely an adoption of the labour employed in the first, the publication of it will be restrained.

No. II. 8 Anne, c. 19.

Upon this principle the property has been protected in a road book, Carnan *v.* Bowles, 2 Bro. Ch. 80—Cary *v.* Longman, 1 East. 358—Cary *v.* Faden, 5 Vesey, 24;—in Tables of Chronology, Trusler *v.* Murray, 1 East. 363. *n.*;—in maps and charts (depending upon 8 Geo. II. c. 13 post), see 12 Vesey, 274;—an East India calendar, Mathewson *v.* Stockdale, 12 Vesey, 270—(in that case, Lord Erskine, granting the injunction, said he had compared the books, and found that, in a long list of casualties, removals, and deaths, there was not the least variation, even as to the situation in the pages): so in the case of a court calendar, Lord Eldon, observing, that from the identity of the inaccuracies it was impossible to deny that the one was copied *verbatim & literatim* from the other—Longman *v.* Winchester, 16 Vesey, 269. In King *v.* Reed, 8 Vesey, 223. upon an application for an injunction with respect to tables of interest, the Lord Chancellor directed the plaintiff to bring an action. It falls within my own knowledge, that an action was brought, and the case was, at the trial, referred to arbitration, as to the question of the one work being a copy from the other.

In matters of this description, the fact of copying is made out as in Longman *v.* Winchester, by an identity of errors. I remember a *Nisi Prius* case in which the plaintiff was nonsuited, with respect to the tables of interest above alluded to, upon the ground that the errors of calculation pointed out as shewing the identity of the work destroyed, so far as they went, its utility; and that, therefore, for a work having such imperfection, no copyright could be claimed: but this case was never brought before the Court, and was expressly disputed in the second action; and it certainly seems very difficult to conceive, that the property of a long and laborious work should be defeated by a few accidental errors in particular calculations.

In Cary *v.* Kearsley, 4 Esp. 168. Lord Ellenborough is reported to have held, that the identity of names in a typographical work was not sufficient to support a count for printing and publishing the plaintiff's work generally, but to have admitted that such evidence might support a count for transcribing particular parts.

[Query if it did not actually appear that the work was not wholly printed—for if the general appearance was the same, a variety of instances in which errors were transcribed might be evidence to satisfy the jury as to copying the whole.]

[22] It is settled in many of the cases, and is fully agreed, that an action is maintainable, not only in respect of the whole of a work, but in respect of the parts of it which have been printed and transcribed—and an action lies for printing the new additions and corrections of an old work.—Cary *v.* Longman, 1 East, 358—Mason *v.* Murray, cited ibid.

[23] It is agreed that a fair abridgement of a work is not protected by the statute, but that works colourably shortened are within the statute, and are an evasion of it.—Gyles *v.* Wilcox, 2 Atk. 141. The same doctrines were stated as settled Law in Bell *v.* Walker, 1 Bro. Ch. 451.

[24] In the before-mentioned case of Cary *v.* Kearsley, 4 Esp. 168. Lord Ellenborough said, that it is lawful to adopt the works of a cotemporary writer and incorporate them in a new work, provided this be done *bonâ fide* and not with a view to steal the original copyright; but in Roworth *v.* Wilkes, 1 Camb. 94. where 75 out of 118 pages of a work of the plaintiff, on Fencing, had been transcribed by the defendant into the Encyclopedia Londinensis, his Lordship held, that an action was maintainable, stating the question to be, whether the defendant's publication would serve as a substitute for that of the plaintiff. A review, he observed, would not in general serve as a substitute for the work reviewed, and even then, if it communicates the same knowledge with the original work, it is an undeniable violation of literary property. The intention to pirate is not necessary to support the action; it is enough that the publication complained of is in substance a copy whereby a work vested in another is prejudiced.

[25] In Sayre *v.* Moore, 1 East. 161. *n.* which was an action upon 17 Geo. III. c. 57. *(infra,)* for pirating charts, but was treated as depending upon the same principles as questions of copyright, it appeared in evidence, that the defendant had used four charts published by the plaintiff, in making one large map, but that there were very important differences between them much in favour of the defendant's, and the evidence shewed the plaintiff's charts to be founded upon a wrong principle. In his charge to the jury, Lord Mansfield said, "in all these cases," (speaking of cases of copyright,) "the question of fact to come before the jury is whether the alteration be colourable or not? there must be such a similitude as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript. So in the case of different prints; no doubt different men may take engravings from the same picture. The same principle holds with regard

to charts; whoever has it in his intention to publish a chart may take advantage of all prior publications." "You are told, that there are various and very material alterations. The chart of the plaintiff is upon a wrong principle, inapplicable to navigation. The defendant, therefore, has been correcting errors, and not servilely copying. If you think so, you will find for the defendant; if you think it is a mere servile imitation, and pirated from the other, you will find for the plaintiff." And in Mathewson *v.* Stockdale, 12 Vesey, 275. Lord Eldon said, "I admit, that no man can monopolize such subjects as the English Channel, the Island of St. Domingo, or the events of the world; and every man may take what is useful from the original work, improve, add, and give to the public the whole comprising the original work, with the additions and improvements, and in such a case there is no invasion of any right."

In Butterworth *v.* Robinson, 5 Vesey, 709. an injunction was granted in the first instance, upon a bill filed, to restrain the selling an abridgement of cases in the courts of law—it being stated, that the work was not a fair abridgement; and that, except in colourably leaving out some parts of the cases, such as the arguments of counsel, it was a verbatim copy of several of the reports of cases in the courts of law, and among them of the Term Reports, of which the plaintiff was proprietor, comprising not a few cases only, but all the cases published in that work—the chronological order of the original work being changed to an alphabetical arrangement, under heads and titles, to give it the appearance of a new work. The Lord Chancellor said, he had looked at one or two cases with which he was well acquainted, and it appeared to him an extremely illiberal publication. No very conclusive inference can be drawn from this ex parte opinion. The case was not brought before the Court again, and in fact, (whether by compromise or otherwise,) the publication went on, and is completed in five volumes, and is an abridgement of all the cases in Courts of Law, from the beginning of the reign of Geo. 3d, to the conclusion of the Term Reports. Such a work, selecting what is material from a large body of reports, and arranging the matter collected so as to render it more commodious for practical reference, whether the arrangement of the titles be alphabetical or systematic, appears to have very much the features of an original work. The motion, in the preceding case, does not seem to dispute the right of selecting passages from books of reports, (including entire judgments,) in treatises upon particular subjects; and I cannot see any material distinction between a liberty to extract all cases respecting bankruptcy, poor laws, insurance, and any other given number of subjects separately, and a liberty to publish a general work embracing the whole of the subjects which have come under legal discussion. In fact, if all works were suppressed, of which a considerable portion consisted of mere transcripts from books of reports, the law libraries would be very much thinned, and would be deprived of several works which are attended with considerable convenience and utility.—See Dodsley *v.* Kinnersley, Ambler, 403. in which Sir Thomas Clarke, M. R. refused an injunction for restraining the publishing an abstract of the Prince of Abyssinia in a Magazine. He observed, that no certain line can be drawn to distinguish a fair abridgement, and that every case must depend upon its own circumstances—some stress was laid upon the plaintiff having himself published extracts in the Annual Register.

[26] In Cary *v.* Faden, 5 Vesey, (being one of the many cases which have been before the Court, respecting Cary's improved Road Book,) Lord Loughborough refused an injunction, seemingly on the ground that a great part of the plaintiff's work was a copy of the preceding work of Patterson, in which (as appears from the case) the copyright had not expired; but from the general tenor of the case, it is clear that a party has, in such cases, a copyright in his own additions, which has indeed been repeatedly decided, with regard to the identical work.

[27] In the before-mentioned case of Cary *v.* Kearsley, 4 Esp. 168. it seems to have been the opinion of Lord Ellenborough, that the first publisher of a book, the copy of which he obtains by a breach of trust, may maintain an action against a stranger for printing it.

[28] In Walcot *v.* Walker, 7 Vesey 1. which depended upon an agreement between the parties, Lord Eldon, after referring to some opinion of Lord Chief Justice Eyre not in print, said "if the doctrine of the Chief Justice was right, and he thought it was, that publications might be of such a nature that the author could maintain no action at law, it was not the business of that Court, even upon the submission in the answer, to decree either an injunction or an account of the profits of works of such a nature that the author could maintain no action at law, for the invasion of that which he calls his property, but which the policy of the law would not permit him to consider as his property. It was the duty of the Court to know, whether an action at law would lie or not, for if not, the Court ought not to give an account of the unhallowed profits of libellous publications. Declaring that at pre-

No. II. 8 Anne, c. 19.

sent, he was in total ignorance of the nature of the work, and whether the plaintiff could have a property in it or not; he would see the publications and determine upon the nature of them, whether there was question enough to send to law, as to the property in the copies; for if not, he would not act upon the submission in the answer. If, upon inspection, the work appeared innocent, he would act upon that submission; if criminal, he would not act at all; and if doubtful he would send that question to law.

It is observable that, in that case, there was no suggestion made to the Court, of any illegality in the contents of the work, and it does not distinctly appear, whether the Court took the matter up as a general rule, that no relief shall be given in respect of any publication, until after a personal examination, as to whether the contents are libellous; or whether the interposition was on account of a previous impression respecting the ludicrous writings published under the fictitious name of Peter Pindar, and to which the particular question immediately related.

In Hime *v.* Dale, 2 Campb. N. P. 27. *n.* it was contended, that on the principle stated in the last case, there could be no copyright in the well known song of Abraham Newland, because the lines,

"Though Justice, 'tis known,
Can see through a mill-stone,
She can't see through Abraham Newland."

was a libel upon the administration of justice.

It might be supposed, that the argument was merely offered for the sake of a jest, but it seems to have received a serious answer from the Court,—Lord Ellenborough saying, that if the composition appeared on the face of it to be a libel, so gross as to affect the public morals, he should advise the jury to give no damages; and his Lordship and Mr. J. Lawrence both forcibly expressed the opinion that the song was not a libel. With respect to the question itself, it certainly does appear to be a correct principle, that a court of justice shall not give relief in favour of the publication of a libel any more than for any other breach of the law, but too much astuteness may be sometimes shewn, in giving the character of a libel to flying squibs, which are only calculated to raise a harmless laugh.

[29] In cases of an invasion of copyright, the remedy is either by action for the penalties upon the Statute, by action on the case for damages, or by injunction in equity. Upon the two former no observations will be requisite, a short examination of the latter will conclude the present note. It is clear that the proceeding by injunction is the most ready and effectual remedy which can be resorted to on the part of the plaintiff, but that a great degree of caution in the application of that proceeding, in the first instance, is requisite for preventing injustice to the defendant, whose loss does not from the nature of it admit of reparation, if the injunction should, upon further investigation, be found to have been erroneously applied, and the judges of courts of equity have in many cases expressed a strong sense of the importance of this principle.

In Hill *v.* the University of Oxon, 1 Vern. 275. the Lord Keeper North refused an injunction in favour of the right of the King's printer, against the claim of the Universities to print Bibles for sale, until he had established his right at law; observing, that in case the right should be found with the defendants, they would by such a prohibition receive a prejudice that he could not compensate nor make good to them; and Lord Clare, in the recent case of Grierson *v.* Jackson, above referred to, followed the same course.

In the general discussion of the common law right of literary property, in Millar *v.* Taylor, 4 Bur. 2303. 1 Bl. Rep. 675. a great stress was laid upon the different injunctions which had been granted by courts of equity, in favour of such right.—Lord Mansfield (who had had very great experience in the Court of Chancery) said, that he looked at the injunctions which had been granted or continued before hearing, as equal to any final decree; for, that such injunction never is granted upon motion, unless the legal property of the plaintiff is made out, nor continued after answer, unless it remains clear. The Court of Chancery never grants injunctions in cases of this kind, when there is any doubt.—Sir Joseph Yates, on the contrary, in combating the general common law right, expressed his opinion, that the injunctions, being temporary only, decided nothing at all.—Lord Camhden, in his speech in Donaldson *v.* Beckett, already referred to, expressed himself upon this part of the argument as follows:—"All the injunction cases have been ably given; though I shall only add, in general terms, that they can prove nothing if a thousand injunctions had been granted, unless the Chancellor at the time he granted them had pronounced a solemn opinion, that they were grounded upon the common law. Lord Hardwicke, after twenty years' experience, in the last case of the kind that came before him, declared that the point had never yet been determined.—Lord

Northington granted them on the idea of a doubtful title. I continued the practice on the same foundation, so did the present Lord Chancellor. Where then is the Chancellor who has declared, *ex cathedrâ*, that he decided upon the common law right? Let the decision be produced in direct terms."

I am not aware of any other general opinions being expressed as to the degree of judgment which ought to be entertained in favour of the right, in order to induce the granting or continuing an injunction previous to the hearing, prior to the case already cited of the Universities of Oxford and Cambridge *v.* Richardson, 1 Vesey, 689. in which Lord Eldon, after citing the observations of Lord Mansfield, and declaring that he could not accede to the proposition so unqualified, adverted and assented to the doctrine established in some recent cases respecting patents, in which the Court of Chancery had injoined the Defendants, during the pendency of the proceedings at law, upon the ground that they had had possession of the invention under colour of the title a patent questionable in that degree gave them; and, upon the same matter coming before the House of Lords, in Bruce *v.* Bruce, cited 13 Vesey, 505. he intimated the same opinion.—Lord Erskine quoting that opinion says, "Lord Eldon, when I pressed him with the cases that are now pressed upon me, to shew that injunctions proceeding upon legal right ought to have their foundation in a legal title, receiving consummation by a legal judgment, answers, that the Court granting the injunction until the hearing did not decide ultimately between the parties." The opinion of Lord Eldon in favour of supporting, by injunction, the supposed possession of patent inventions, accompanied by colour of right, is also expressed and acted upon in Harmar *v.* Playne, 14 Vesey, 130. which, with my impressions respecting it, I have stated in the note to the preceding number.

In Hogg *v.* Kirby, 8 Vesey, 224. Lord Eldon, referring to the view taken of the subject by Lord Mansfield in Millar and Taylor, says, that in these cases which are very well expounded in that case, a Court of Equity takes upon itself to determine, as well as it can, the right in this period, and with a conviction, that if then the cause was hearing they would act upon the same rule. The Court takes upon itself, that which may involve it in mistake to determine the legal question. It is the decision of a judge sitting in equity, upon a legal question, and therefore not having all the authority of a decision of a court of law, but giving an opinion, and pledged to maintain it, unless there should be occasion to alter it.

Lord Erskine, in Gurney *v.* Longman, 13 Vesey, 505. (respecting the publication of Lord Melville's Trial), said, "I am so much convinced by the arguments for the defendant as to the effect of an injunction, upon a publication of this temporary nature, calculated merely for the gratification of present curiosity, that, unless I had a strong impression that at the hearing I should continue of the same opinion, and should grant a perpetual injunction, I would not grant the injunction now, which I only do as there is no probability that new facts will appear by the answer."

In case there should be any difference between the views which have been taken upon this subject, and which is still open to discussion, the justice of the case is apparently much in favour of that opinion, which is adverse to granting this extraordinary mode of relief upon less satisfactory grounds than such as would induce an absolute decision upon the direct question of right, supposing that question to have been the proper and immediate subject of the inquiry.

[No. III.] 8 George II. c. 13.—An Act for the Encouragement of the Arts of Designing, Engraving and Etching Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned.

8 Geo. II. c. 13.

Preamble. See 3 Wils. 60.

'WHEREAS divers persons have by their own genius industry pains and expence invented and engraved or worked in *mezzotinto* or *chiaro oscuro* sets of historical and other prints in hopes to have reaped the sole benefit of their labours: And whereas printsellers and other persons have of late, without the consent of the inventors designers and proprietors of such prints, frequently taken the liberty of copying engraving and publishing or causing to be copied engraved and published base copies of such works designs and prints to the very great prejudice and detriment of the inventors designers and proprietors thereof;'

No. III. 8 Geo. II. c. 13.

For remedy thereof, and for preventing such practices for the future, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* which shall be in the year of our Lord one thousand seven hundred and thirty-five every person who shall invent and design engrave etch or work in *mezzotinto* or *chiaro oscuro*, or from his own works and inventions (1.) shall cause to be designed and engraved etched or worked in *mezzotinto* or *chiaro oscuro* any historical or other print or prints shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years to commence from the day of the first publishing thereof, which shall be truly engraved (2.) with the name of the proprietor on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-five within the time limited by this Act shall engrave etch or work as aforesaid or in any other manner copy and sell or cause to be engraved etched or copied and sold in the whole or in part by varying adding to or diminishing from the main design, or shall print reprint or import for sale or cause to be printed reprinted or imported for sale any such print or prints or any parts thereof without the consent of the proprietor or proprietors thereof first had and obtained in writing signed by him or them respectively in the presence of two or more credible witnesses, or knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors shall publish sell or expose to sale or otherwise or in any other manner dispose of or cause to be published sold or exposed to sale or otherwise or in any other manner disposed of any such print or prints without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be so copied or printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further that every such offender or offenders shall forfeit five shillings for every print which shall be found in his her or their custody either printed or published and exposed to sale or otherwise disposed of contrary to the true intent and meaning of this Act; the one moiety

Property of Prints vested in the Inventor for Fourteen Years.

Proprietor's Name to be affixed to each Print.

Penalty on Printsellers or others pirating the same.

(1.) The Act is not confined to inventions, strictly speaking, but means the designing or engraving any thing that is already in nature; and Lord Hardwicke granted an injunction as to prints of medicinal plants, saying, that the defendant, to make out the case he aims at, must shew that they are, in any other book or herbal, in the same manner and form as they are represented here—Blackwall *v.* Harper, 2 Atk. 93.; but in the subsequent case of Jeffreys *v.* Baldwin, Ambler, 164. his Lordship refused an injunction with respect to a drawing of herring busses, saying, that "the case was not within the statute, which was made for the encouragement of genius and art; if it was, any person who employs a printer or engraver would be so too. The statute is, in this respect, like the statute of new inventions, from which it is taken." But any objection of this kind seems to be removed by stat. 7 Geo. 3. c. 38. post. As to the degree of originality which brings a case within the statute; see note to the preceding number, and Roworth *v.* Wilkes, 1 Campb. 94.

(2.) Both the date and the name must be engraved to entitle the party to the penalties under the statute.—Sayer *v.* Dicey, 3 Wils. 60. An action on the case may be maintained by the publisher or his assignee, and this *comme semble* independently of the authority of statute 17 Geo. 3. c. 57. post. In Thomson *v.* Symonds, 5 T. R. 41. it seems to be taken for granted, that to support such action, it is necessary that the date and name of the publisher shall be engraved as directed; but in Haworth *v.* Wilkes, 1 Campb. N. P. 94. Lord Ellenborough held, that although the plaintiff's name was not engraved, if there had been a piracy, he was entitled to a verdict; for the interest being vested, the law gives a remedy. He assimilated the case to Beckford *v.* Hood, 7 T. R. 620. decided on statute 8 Anne, c. 19. (V. the preceding number,) but query, if there is not an evident difference in the language of the statutes—and whether, in this statute, the engraving the name, &c. is not an express condition to the vesting of the right; whereas, in that act, the direction for entering at Stationers' Hall is a separate and distinct provision. It is however to be observed, that, in Blackwall *v.* Harper, 2 Atk. 92. Lord Hardwicke considers the provision for engraving the name and date as only directory and only necessary to make the penalty incur.

thereof to the King's most excellent Majesty his heirs and successors and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of his Majesty's courts of record at *Westminster* by action of debt bill plaint or information, in which no wager of law essoign privilege or protection or more than one imparlance shall be allowed. No. III. 8 Geo. II. c. 13.

II. Provided nevertheless, That it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates for printing from the original proprietors thereof to print and reprint from the said plates without incurring any of the penalties in this Act mentioned. Not to extend to Purchasers of Plates from the original Proprietors.

III. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done any thing in pursuance of this Act, the same shall be brought within the space of three months after so doing; and the defendant or defendants in such action or suit shall or may plead the general issue and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited or discontinue his her or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law. Limitation of Actions. General Issue.

IV. Provided always and be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons for any offence committed against this Act, the same shall be brought within the space of three months after the discovery of every such offence and not afterwards; any thing in this Act contained to the contrary notwithstanding.

V. 'And whereas *John Pine* of *London* engraver doth propose to engrave and publish a set of prints copied from several pieces of tapestry in the House of Lords and his Majesty's wardrobe and other drawings relating to the *Spanish* invasion in the year of our Lord one thousand five hundred and eighty-eight;' Be it further enacted by the authority aforesaid, That the said *John Pine* shall be entitled to the benefit of this Act to all intents and purposes whatsoever in the same manner as if the said *John Pine* had been the inventor and designer of the said prints. Clause relating to J. Pine.

VI. And be it further enacted by the authority aforesaid, That this Act shall be deemed adjudged and taken to be a publick Act, and be judicially taken notice of as such by all judges justices and other persons whatsoever without specially pleading the same. Publick Act.

[No. IV.] 12 George II. c. 36.—An Act for prohibiting the Importation of Books reprinted Abroad, and first composed or written and printed in *Great Britain*; and for repealing so much of an Act made in the Eighth Year of the Reign of her late Majesty Queen *Anne*, as empowers the limiting the Prices of Books.

'WHEREAS the duties payable upon paper imported into this kingdom to be made use of in printing greatly exceed the duties payable upon the importation of printed books whereby foreigners and others are encouraged to bring in great numbers of books originally printed and published in this kingdom and reprinted abroad, to the diminution of his Majesty's revenue and the discouragement of the trade and manufacture of this kingdom;' For the preventing thereof for the future, May it please your most excellent Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the twenty-ninth day of *September* one 12 Geo. II. c. 36. Preamble.

No. IV. 12 Geo. II. c. 36.

thousand seven hundred and thirty-nine it shall not be lawful for any person or persons whatsoever to import or bring into this kingdom for sale any book or books first composed or written and printed and published in this kingdom and reprinted in any other place or country whatsoever; and if any person or persons shall import or bring into this kingdom for sale any printed book or books so first composed or written and printed in this kingdom and reprinted in any other place or country as aforesaid; or knowing the same to be so reprinted or imported contrary to the true intent and meaning of this Act shall sell publish or expose to sale any such book or books; then every such person or persons so doing or offending shall forfeit the said book or books and all and every sheet or sheets thereof; and the same shall be forthwith damasked and made waste paper; and further that every such offender or offenders shall forfeit the sum of five pounds (1.) and double the value of every book which he or they shall so import or bring into this kingdom or shall knowingly sell publish or expose to sale or cause to be sold published or exposed to sale contrary to the true intent and meaning of this Act; the one moiety thereof to the King's most excellent Majesty his heirs and successors and the other moiety to any person or persons that shall sue for the same; to be recovered with costs of suit in any of his Majesty's courts of record at *Westminster* by action of debt bill plaint or information, in which no wager of law essoign or protection or more than one imparlance shall be allowed; and if the offence be committed in *Scotland* to be recovered before the Court of Session there by summary action: Provided that this Act shall not extend to any book that has not been printed or reprinted in this kingdom within twenty years before the same shall be imported.

II. Provided always, That nothing in this Act contained shall extend to prevent or hinder the importation of any book first composed or written and printed in this kingdom which shall or may be reprinted abroad and inserted among other books or tracts to be sold therewith in any collection where the greatest part of such collection shall have been first composed or written and printed abroad; any thing in this Act contained to the contrary notwithstanding.

Clause in 8 Anne, c. 19. repealed.

III. And be it further enacted by the authority aforesaid, That so much of an Act made in the eighth year of the reign of her late Majesty Queen *Anne*, intituled *An Act for the Encouragement of Learning; by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned*, whereby it is provided and enacted, That if any bookseller or booksellers printer or printers shall after the said five-and-twentieth day of *March* one thousand seven hundred and ten set a price upon or sell or expose to sale any book or books at such a price or rate as shall be conceived by any person or persons to be high and unreasonable; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of *Canterbury* for the time being the Lord Chancellor or Lord Keeper of the great seal of *Great Britain* for the time being the Lord Bishop of *London* for the time being the Lord Chief Justice of the Court of *Queen's Bench* the Lord Chief Justice of the Court of *Common Pleas* the Lord Chief Baron of the Court of *Exchequer* for the time being the Vice-Chancellors of the two Universities for the time being in that part of *Great Britain* called *England* the Lord President of the Sessions for the time being the Lord Justice General for the time being the Lord Chief Baron of the *Exchequer* for the time being the Rector of the college of *Edinburgh* for the time being in that part of *Great Britain* called *Scotland*, who or any one of them shall and have hereby full power and authority from time to time to send for summon or call before him or them such bookseller or booksellers printer or printers and to examine and inquire of the reason of the dearness and enhancement of the price of value of such book or books by him or them so sold or exposed to sale; and if upon such inquiry and examination it shall be

(1.) Two Penalties may be incurred upon this Clause on the same day.—Brooke *v.* Milliken, 3 T. R. 509.

No. IV. 12 Geo. II. c. 36.

found that the price of such book or books is enhanced or any ways too high and unreasonable, then and in such case the said Archbishop of *Canterbury* Lord Chancellor or Lord Keeper Bishop of *London* two Chief Justices Chief Baron Vice-Chancellors of the Universities in that part of *Great Britain* called *England* and the said Lord President of the Sessions Lord Justice General Lord Chief Baron and Rector of the college of *Edinburgh* in that part of *Great Britain* called *Scotland*, or any one or more of them so inquiring and examining, have hereby full power and authority to reform and redress the same and to limit and settle the price of every such printed book and books from time to time according to the best of their judgments and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers printer or printers to award and order such bookseller and booksellers printer and printers to pay all the costs and charges that the person or persons so complaining shall be put unto by reason of such complaint and of the causing such rate or price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury* Lord Chancellor or Lord Keeper Bishop of *London* two chief Justices Chief Baron Vice-Chancellors of the two Universities in that part of *Great Britain* called *England* and the said Lord President of the Sessions Lord Justice General Lord Chief Baron and Rector of the college of *Edinburgh* in that part of *Great Britain* called *Scotland*, or any one of them, by writing under their hands and seals, and thereof publick notice shall be forthwith given by the said bookseller or booksellers printer or printers by an advertisement in the *Gazette;* and if any bookseller or booksellers printer or printers shall after such settlement made of the said rate and price sell or expose to sale any book or books at a higher or greater price than what shall have been so limited and settled as aforesaid, then and in every such case such bookseller or booksellers printer or printers shall forfeit the sum of five pounds for every such book so by him her or them sold or exposed to sale, one moiety thereof to the Queen's most excellent Majesty her heirs and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered with costs of suit in any of her Majesty's courts of record at *Westminster* by action of debt bill plaint or information, in which no wager of law essoign privilege or protection or more than one imparlance shall be allowed; and every part of the said clause shall be and the same is hereby repealed.

Farther continued by 27 Geo. 2. c. 18. and 33 Geo. 2. c. 16.

IV. And be it further enacted, That this Act (except so much thereof as repeals the before-mentioned clause in the said Act of the eighth year of the reign of the late Queen *Anne* relating to the prices of books) shall continue and be in force from the said twenty-ninth day of *September* one thousand seven hundred and thirty-nine for and during the space of seven years, and from thence to the end of the then next session of Parliament and no longer.

[No. V.] 7 George III. c. 38.—An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King *George* the Second, for Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints; and for vesting in and securing to *Jane Hogarth*, Widow, the Property in certain Prints.

7 Geo. III. c. 38.

8 Geo. 2. c. 13.

'WHEREAS an Act of Parliament passed in the eighth year of the reign of his late Majesty King *George* the Second, intituled *An Act for the Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the Time therein mentioned* has been found ineffectual for the Purposes thereby intended;' Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Par-

Original Inventors, &c. of Prints, &c.

No. V. 7 Geo. III. c. 38.

liament assembled, and by the authority of the same, That from and after the first day of *January* one thousand seven hundred and sixty-seven all and every person and persons who shall invent or design engrave etch or work in *mezzotinto* or *chiaro oscuro*, or from his own work design or invention shall cause or procure to be designed engraved etched or worked in *mezzotinto* or *chiaro oscuro* any historical print or prints, or any print or prints of any portrait conversation landscape or architecture map chart or plan or any other print or prints whatsoever, shall have and are hereby declared to have the benefit and protection of the said Act (1.) and this Act under the restrictions and limitations hereinafter mentioned.

intitled to the Benefit of recited and present Act, &c.

II. And be it further enacted by the authority aforesaid, That from and after the said first day of *January* one thousand seven hundred and sixty-seven all and every person and persons who shall engrave etch or work in *mezzotinto* or *chiaro oscuro*, or cause to be engraved etched or worked any print taken from any picture drawing model or sculpture either ancient or modern, shall have and are hereby declared to have the benefit and protection of the said Act and this Act for the time hereinafter mentioned in like manner as if such print had been graved or drawn from the original design of such graver etcher or draftsman, and if any person shall engrave print and publish or import for sale any copy of any such print contrary to the true intent and meaning of this and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as therein and herein-after is mentioned.

"The sole right of printing and reprinting the late *W. Hogarth*'s "prints vested in his widow and executrix for twenty years. Penalty of "copying, &c. any of them before expiration of the term; such copies "excepted as were made and exposed to sale after the term of fourteen "years for which the said works were first licensed, &c."

V. And be it further enacted by the authority aforesaid, That all and every the penalties and penalty inflicted by the said Act and extended and meant to be extended to the several cases comprised in this Act shall and may be sued for and recovered in like manner and under the like restrictions and limitations as in and by the said Act is declared and appointed; and the plaintiff or common informer in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former Act) shall recover the same together with his full costs of suit.

VI. Provided also, That the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.

The Right intended vested in the Proprietors for 28 Years.

VII. And be it further enacted by the authority aforesaid, That the sole right and liberty of printing and reprinting intended to be secured and protected by the said former Act and this Act shall be extended continued and be vested in the respective proprietors for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively herein-before and in the said former Act mentioned.

Limitation of Actions.

VIII. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done any thing in pursuance of this Act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any of such action or suit shall or may plead the general issue and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become non-suited or discontinue his her or their action or actions, then the defendant or defendants shall have and recover full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

General Issue.

Full Costs.

(1.) It is observable, that this Act does not expressly require the name of the proprietor and the date of publication to be engraved on the print— but query if the provision of Statute 8 Geo. 2. in that respect, is not to be considered as included by reference.

[No. VI.] 15 George III. c. 53.—An Act for enabling the two Universities in *England*, the four Universities in *Scotland*, and the several Colleges of *Eton*, *Westminster*, and *Winchester*, to hold in Perpetuity their Copyright in Books, given or bequeathed to the said Universities and Colleges for the Advancement of useful Learning and other Purposes of Education; and for amending so much of an Act of the Eighth Year of the Reign of Queen *Anne*, as relates to the Delivery of Books to the Warehouse-keeper of the Stationers' Company, for the Use of the several Libraries therein mentioned.

No. VI. 15 Geo. III. c. 53.

15 Geo. III. c. 53.

'WHEREAS authors have heretofore bequeathed or given and may hereafter bequeath or give the copies of books composed by them to or in trust for one of the two universities in that part of *Great Britain* called *England*, or to or in trust for some of the colleges or houses of learning within the same, or to or in trust for the four universities in *Scotland*, or to or in trust for the several colleges of *Eton Westminster* and *Winchester*, and in and by their several wills or other instruments of donation have directed or may direct that the profits arising from the printing and reprinting such books shall be applied or appropriated as a fund for the advancement of learning and other beneficial purposes of education within the said universities and colleges aforesaid: And whereas such useful purposes will frequently be frustrated unless the sole printing and reprinting of such books, the copies of which have been or shall be so bequeathed or given as aforesaid, be preserved and secured to the said universities colleges and houses of learning respectively in perpetuity:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That the said universities and colleges respectively shall at their respective presses have for ever the sole liberty of printing and reprinting all such books as shall at any time hereafter have been or (having not been heretofore published or assigned) shall at any time hereafter be bequeathed or otherwise given by the author or authors of the same respectively or the representatives of such author or authors to or in trust for the said universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four universities in *Scotland*, or to or in trust for the said colleges of *Eton Westminster* and *Winchester* or any of them for the purposes aforesaid, unless the same shall have been bequeathed or given or shall hereafter be bequeathed or given for any term of years or other limited term; any law or usage to the contrary hereof in any wise notwithstanding.

Universities, &c. to have for ever the sole Right of printing, &c.

II. And it is hereby further enacted, That if any bookseller printer or other person whatsoever from and after the twenty-fourth day of *June* one thousand seven hundred and seventy-five shall print reprint or import or cause to be printed reprinted or imported any such book or books; or knowing the same to be so printed or reprinted shall sell publish or expose to sale or cause to be sold published or exposed to sale any such book or books; then such offender or offenders shall forfeit such book or books and all and every sheet or sheets being part of such book or books to the university college or house of learning respectively to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further that such offender or offenders shall forfeit one penny for every sheet which shall be found in his her or their custody either printed or printing published or exposed to sale contrary to the true intent and meaning of this Act; one moiety thereof to the King's most excel-

Persons printing or selling such Books shall forfeit the same, and also 1*d.* for every sheet;

one Moiety to his Majesty, and the other to the Prosecutor.

No. VI. 15 Geo. III. c. 53.

lent Majesty his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same; to be recovered in any of his Majesty's courts of record at *Westminster* or in the Court of Session in *Scotland* by action of debt bill plaint or information, in which no wager of law essoign privilege or protection or more than one imparlance shall be allowed.

III. Provided nevertheless, That nothing in this Act shall extend to grant any exclusive right otherwise than so long as the books or copies belonging to the said universities or colleges are printed only at their own printing presses within the said universities or colleges respectively and for their sole benefit and advantage; and that if any university or college shall delegate grant lease or sell their copy rights or exclusive rights of printing the books hereby granted or any part thereof, or shall allow permit or authorise any person or persons or bodies corporate to print or reprint the same, that then the privileges hereby granted are to become void and of no effect in the same manner as if this Act had not been made; but the said universities and colleges as aforesaid shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid in like manner as any author or authors now may do under the provisions of the statute of the eighth year of her Majesty Queen *Anne*.

No Person subject to Penalties, unless entered before, &c.

Books must be entered within Two Months after Bequest.

IV. 'And whereas many persons may through ignorance offend 'against this Act unless some provision be made whereby the property 'of every such book as is intended by this Act to be secured to the said 'universities colleges and houses of learning within the same and to the 'said universities in *Scotland* and to the respective colleges of *Eton West-'minster* and *Winchester* may be ascertained and known;' Be it therefore enacted by the authority aforesaid, That nothing in this Act contained shall be construed to extend to subject any bookseller printer or other person whatsoever to the forfeitures or penalties herein mentioned for or by reason of the printing or reprinting importing or exposing to sale any book or books unless the title to the copy of such book or books which has or have been already bequeathed or given to any of the said universities or colleges aforesaid be entered in the register book of the Company of Stationers kept for that purpose in such manner as hath been usual on or before the twenty-fourth day of *June* one thousand seven hundred and seventy-five; and of all and every such book or books as may or shall hereafter be bequeathed or given as aforesaid be entered in such register within the space of two months after any such bequest or gift shall have come to the knowledge of the vice-chancellors of the said universities or heads of houses and colleges of learning or of the principal of any of the said four universities respectively; for every of which entries so to be made as aforesaid the sum of six pence shall be paid and no more; which said register book shall and may at all seasonable and convenient times be referred to and inspected by any bookseller printer or other person without any fee or reward; and the clerk of the said Company of Stationers shall when and as often as thereunto required give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding six pence.

If Clerk neglect to make Entry, &c. Proprietor to have like Benefit, &c.

V. And be it further enacted, That if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries or to give such certificate, being thereunto required by the agent of either of the said universities or colleges aforesaid lawfully authorised for that purpose, then either of the said universities or colleges aforesaid, being the proprietor of such copyright or copyrights as aforesaid (notice being first given of such refusal by advertisement in the *Gazette*) shall have the like benefit as if such entry or entries certificate or certificates had been duly made and given; and the clerk so refusing shall for every such offence forfeit twenty pounds to the proprietor or proprietors of every such copyright; to be recovered in any of his Majesty's courts of record at *Westminster* or in the court of Session in *Scotland* by action of debt bill plaint or information, in which no wager of law essoign privilege protection or more than one imparlance shall be allowed.

8 Anne, c. 19.

VI. 'And whereas in and by an Act of Parliament made in the eighth

'year of the reign of her late Majesty Queen *Anne*, intituled, *An Act for* No. VI.
'*the Encouragement of Learning by vesting the Copies of printed Books in*
'*the Authors or Purchasers of such Copies during the Times therein men-* 15 Geo. III.
'*tioned*, it is enacted, That nine copies of each book or books upon the c. 53.
'best paper that from and after the tenth day of *April* one thousand
'seven hundred and ten should be printed and published as therein men-
'tioned, or reprinted and published with additions, shall by the printer or
'printers thereof be delivered to the warehouse-keeper of the said Com-
'pany of Stationers for the time being at the hall of the said Company
'before such publication made, for the use of the royal library the libra-
'ries of the universities of *Oxford* and *Cambridge* the libraries of the
'four universities in *Scotland* the library of *Sion College* in *London* and
'the library commonly called *The Library belonging to the Faculty of*
'*Advocates in* Edinburgh respectively; which such warehouse-keeper
'was thereby required within ten days after demand by the keepers of
'the respective libraries, or any person or persons by them or any of
'them authorised to demand the said copy, to deliver the same for the
'use of the aforesaid libraries; and if any proprietor bookseller or printer
'or the said warehouse-keeper of the said Company of Stationers should
'not observe the direction of the said Act therein, that then he and they
'so making default in not delivering the said printed copies as aforesaid
'should forfeit as therein mentioned: And whereas the said provision has
'not proved effectual but the same hath been eluded by the entry only of
'the title to a single volume or of some part of such book or books so
'printed and published or reprinted and republished as aforesaid;' Be it No Person subject to Penalties in the said Act, unless the Title to the Copy of the whole be entered, &c.
enacted by the authority aforesaid, That no person or persons whatsoever shall be subject to the penalties in the said Act mentioned for or by reason of the printing or reprinting importing or exposing to sale any book or books without the consent mentioned in the said Act, unless the title to the copy of the whole of such book and every volume thereof be entered in manner directed by the said Act in the register book of the Company of Stationers, and unless nine such copies of the whole of such book or books and every volume thereof printed and published or reprinted or republished as therein mentioned shall be actually delivered to the warehouse-keeper of the said Company as therein directed for the several uses of the several libraries in the said Act mentioned.

VII. And be it further enacted by the authority aforesaid, That if any Limitation of Actions.
action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done any thing in pursuance of this Act, the defendants in such action may plead the general issue and give the special matter in evidence; and if upon such action a General Issue.
verdict, or if the same shall be brought in the Court of Session in *Scotland* a judgment be given for the defendant, or the plaintiff become nonsuited and discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath.

VIII. And be it further enacted by the authority aforesaid, That this Publick Act.
Act shall be adjudged deemed and taken to be a publick Act; and shall be judicially taken notice of as such by all judges justices and other persons whatsoever without specially pleading the same.

[No. VII.] 17 George III. c. 57.—An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases.

'WHEREAS an Act of Parliament passed in the eighth year of the 17 George III.
'reign of his late Majesty King *George* the Second, intituled *An* c. 57.
'*Act for the Encouragement of the Arts of Designing, Engraving and* 8 Geo. 2.
'*Etching Historical and other Prints, by vesting the Properties thereof in*
'*the Inventors and Engravers during the time therein mentioned:* And
'whereas by an Act of Parliament, passed in the seventh year of the 7 Geo. 3.

No. VII. 17 Geo. III. c. 57.

'reign of his present Majesty, *for amending and rendering more effectual* 'the aforesaid Act, and for other purposes therein mentioned, it was '(among other things) enacted, That from and after the first day of *Ja-* 'nuary one thousand seven hundred and sixty-seven all and every person 'or persons who should engrave etch or work in *mezzotinto* or *chiaro* 'oscuro, or cause to be engraved etched or worked any print taken from 'any picture drawing model or sculpture either ancient or modern, should 'have and were thereby declared to have the benefit and protection of 'the said former Act and that Act for the term therein-after mentioned, 'in like manner as if such print had been graved or drawn from the ori- 'ginal design of such graver etcher or draughtsman: And whereas the 'said Acts have not effectually answered the purposes for which they 'were intended, and it is necessary for the encouragement of artists and 'for securing to them the property of and in their works and for the ad- 'vancement and improvement of the aforesaid arts that such further 'provisions should be made as are herein-after mentioned and contained;' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* one thousand seven hundred and seventy-seven if any engraver etcher printseller or other person shall within the time limited by the aforesaid Acts, or either of them, engrave etch or work or cause or procure to be engraved etched or worked in *mezzotinto* or *chiaro oscuro*, or otherwise or in any other manner copy in the whole or in part by varying adding to or diminishing from the main design, or shall print reprint or import for sale or cause or procure to be printed reprinted or imported for sale, or shall publish sell or otherwise dispose of or cause or procure to be published sold or otherwise disposed of any copy or copies of any historical print or prints or any print or prints of any portrait conversation landscape or architecture map chart (1.) or plan, or any other print or prints whatsoever which hath or have been or shall be engraved etched drawn or designed in any part of *Great Britain* without the express consent of the proprietor or proprietors thereof first had and obtained in writing signed by him her or them respectively with his her or their own hand or hands in the presence of and attested by two or more credible witnesses, then every such proprietor or proprietors (2.) shall and may, by and in a special action upon the case to be brought against the person or persons so offending recover such damages as a jury on the trial of such action or on the execution of a writ of inquiry thereon shall give or assess together with double costs of suit.

If any Engraver, &c. shall engrave, &c. any Print without the Consent of the Proprietor, he shall be liable to Damages and Double Costs.

(1.) As to publishing Charts on an improved and more useful principle, see Sayre *v.* Moore, 1 E. 361. *n.* cited in note to 8 Ann, c. 19. ante No. 2.

(2.) This Action may be brought by an Assignee of the Print. It is not necessary to produce the original Plate in Evidence.—Thomson *v.* Symonds, 5 T. R. 41.

[No. VIII.] 27 George III. c. 38.—An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Callicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors, for a limited Time.

27 George III. c. 38. Preamble.

'WHEREAS it may be expedient for the encouragement of the arts 'of designing original patterns for linens calicoes cottons and mus- 'lins to vest the property thereof in the designers printers or proprietors 'for a limited time; For which purpose may it please your Majesty that 'it may be enacted;' And be it enacted by the King's most excellent

* See 34 Geo. III. c. 22. post, and Note.

No. VIII.
27 Geo. III.
c. 38.

Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authoriy of the same, That from and after the first day of *June* one thousand seven hundred and eighty-seven every person who shall invent design and print or cause to be invented designed and printed and become the proprietor of any new and original pattern or patterns for printing linens cottons calicoe or muslins shall have the sole right and liberty of printing and reprinting the same for the term of two months, to commence from the day of the first publishing thereof, which shall be truly printed with the name of the printer or proprietors at each end of every such piece of linen cotton calico or muslin; and that if any calico printer linen draper or other person whatsoever, from and after the first day of *June* one thousand seven hundred and eighty-seven, within the time limited by this Act, shall print work or copy such original pattern or patterns or cause to be printed worked or copied such original pattern or patterns, or shall print or reprint or cause to be printed or reprinted any such pattern or patterns and shall publish sell or expose to sale or in any other manner dispose of or cause to be published sold or exposed to sale or in any other manner disposed of any linen cotton calico or muslin so printed without the consent of the proprietor or proprietors thereof first had and obtained in writing signed by him or them respectively in the presence of two or more credible witnesses knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors of such pattern, then every such proprietor or proprietors shall and may, if the offence be committed in *England*, by and in a special action upon the case to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action or on the execution of a writ of inquiry thereon shall give or assess together with costs of suit, in which no wager of law essoign privilege or protection or more than one imparlance shall be allowed; and if the offence be committed in *Scotland* every such proprietor or proprietors shall and may by an action to be brought before the court of session or any judge competent to try civil causes within his bounds recover such damages as the said court of session or the said judge shall give or assess, and for payment whereof decree shall be issued with full costs of suit, on which all such execution shall pass as is competent by the laws and practice of *Scotland* in the like cases: Provided nevertheless, That it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates block or blocks for printing from the proprietors thereof to print reprint and expose for sale or cause to be printed reprinted and exposed for sale from the said plates or blocks without being liable to any action on that account.

From June 1, 1787, the Proprietor of any original Pattern for printing Linen to have the sole Right of printing it for Two Months from first Publication;

and whoever shall within that Period print the same, to be liable to an Action for Damages;

but any Person purchasing Plates from the Proprietors may print therefrom.

II. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for any offence committed against this Act, the same shall be brought within the space of six months after so doing, and the defendant or defendants in such action or suit if brought in *England* shall and may plead the general issue and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited or discontinue his her or their action or actions, then the defendant or defendants shall have and receive full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law; and if such action be brought in *Scotland* and not insisted in, or if the defender be assoilzied, then the defender shall be entitled to full costs, for the recovery whereof he shall have the same remedy as herein-before is given to the pursuer.

Mode of prosecuting Offences against this Act.

III. And be it further enacted by the authority aforesaid, That this Act shall continue in force for one year and from thence to the end of the then next session of Parliament; and shall be deemed adjudged and taken to be a publick Act and be judicially taken notice of as such by all judges justices and other persons whatsoever without specially pleading the same.

Act to continue in force for one Year, and to the End of the then next Session.

Continued by 29 Geo. 3. c. 19.

No. IX. 34 Geo. III. c. 23.

[No. IX.] 34 George III. c. 23.—An Act for amending and making perpetual an Act made in the Twenty-seventh Year of the Reign of his present Majesty, intituled, *An Act for the Encouragement of the Arts of Designing and Printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors, for a limited Time.*—[*4th April* 1794.]

34 George III. c. 23. 27 Geo. 3. 29 Geo. 3. Expedient to extend Time limited by 27 Geo. 3.

'WHEREAS an Act was made in the twenty-seventh year of the reign of his present Majesty, intituled *An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes and Muslins, by vesting the Properties thereof in the Designers, Printers and Proprietors for a limited time;* which said Act was by another Act made in the twenty-ninth year of the reign of his present Majesty continued from the expiration thereof until the first day of *July* one thousand seven hundred and ninety-four: And whereas the said first recited Act hath by experience been found to be useful and beneficial: And whereas it is expedient that the time limited by the said first recited Act for vesting the property of new and original patterns for printing linens cottons calicoes or muslins in the designers printers and proprietors thereof should be extended for a longer time:' May it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the first day of *July* one thousand seven hundred and ninety-four every person who shall invent design and print or cause to be invented designed and printed and become the proprietor of any new and original pattern or patterns for printing linens cottons calicoes or muslins shall have the sole right and liberty of printing and reprinting the same for the term of three months, to commence from the day of the first publishing thereof, which shall be truly printed (1.) with the name of the printer or proprietors at each end of every such piece of linen cotton calico or muslin; and that if any calico printer linen draper or other person whatsoever from and after the said first day of *July* one thousand seven hundred and ninety-four, within the time limited by this Act, shall print work or copy such original pattern or patterns or cause to be printed worked or copied such original pattern or patterns, or shall print or reprint or cause to be printed or reprinted any such pattern or patterns, and shall publish sell or expose to sale or in any other manner dispose of or cause to be published sold or exposed to sale or in any other manner disposed of, any linen cotton calico or muslin so printed (without the consent of the proprietor or proprietors thereof first had and obtained in writing signed by him or them respectively in the presence of two or more credible witnesses) knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors of such pattern; then every such proprietor or proprietors shall and may, if the offence be committed in *England*, by and in a special action upon the case to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action or on the execution of a writ of enquiry thereon shall give or assess together with costs of suit, in which no wager of law essoign privilege or protection or more than one imparlance shall be allowed: and that in all other respects the said first recited Act and all the clauses matters and things therein contained (except so far as the same is varied by this Act) shall be and the same is hereby made perpetual.

Term further extended.

Act made perpetual.

(1.) In Macmurdo v. Smith, 7 T. R. 518. it was ruled, that the omission to state, in a declaration founded on this Statute, that the day of first publishing was printed, &c. is cured by verdict, it being alleged, that the Defendant printed within the Term of Three Months, the Plaintiff was entitled to the sole right, &c. but it was admitted, that the Declaration would have been bad on Demurrer.

[No. X.] 38 George III. c. 71.—An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned.—[21st *June* 1798.]

No. X. 38 Geo. III. c. 71.

38 George III. c. 71.

'WHEREAS divers persons have by their own genius industry pains and expence improved and brought the art of making new models and casts of busts and of statues of human figures and of animals to great perfection, in hopes to have reaped the sole benefit of their labours; but that divers persons have (without the consent of the proprietors thereof) copied and made moulds from the said models and casts and sold base copies and casts of such new models and casts to the great prejudice and detriment of the original proprietors and to the discouragement of the art of making such new models and casts as aforesaid:' For remedy whereof and for preventing such practices for the future, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act every person who shall make or cause to be made any new model or copy or cast made from such new model of any bust or any part of the human figure or any statue of the human figure or the head of any animal or any part of any animal or the statue of any animal; or shall make or cause to be made any new model copy or cast from such new model in alto or basso relievo or any work in which the representation of any human figure or figures or the representation of any animal or animals shall be introduced, or shall make or cause to be made any new cast from nature of any part or parts of the human figure or of any part or parts of any animal, shall have the sole right and property in every such new model copy or cast, and also in every such new model copy or cast in alto or basso relievo or any work as aforesaid, and also in every such new cast from nature as aforesaid, for and during the term of fourteen years from the time of first publishing the same: Provided always, That every person who shall make or cause to be made any such new model copy or cast or any such new model copy or cast in alto or basso relievo or any work as aforesaid, or any new cast from nature as aforesaid, shall cause his or her name to be put thereon with the date of the publication before the same shall be published and exposed to sale.

The sole Right and Property of making Models or Casts shall be vested in the original Proprietor for 14 Years.

II. And be it further enacted, That if any person shall within the said term of fourteen years make or cause to be made any copy or cast of any such new model copy or cast or any such model copy or cast in alto or basso relievo or any such work as aforesaid, or any such new cast from nature as aforesaid, either by adding to or diminishing from any such new model copy or cast or adding to or diminishing from any such new model copy or cast in alto or basso relievo or any such work as aforesaid, or adding to or diminishing from any such new cast from nature or shall cause or procure the same to be done, or shall import any copy or cast of such new model copy or cast, or copy or cast of such new model copy or cast in alto or basso relievo or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid for sale, or shall sell or otherwise dispose of or cause or procure to be sold or exposed to sale or otherwise disposed of any copy or cast of any such new model copy or cast, or any copy or cast of such new model copy or cast in alto or basso relievo or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid without the express consent of the proprietor or proprietors thereof first had and obtained in writing signed by him her or them respectively with his her or their hand or hands in the presence of and attested by two or more credible witnesses, then and in all or any of the cases aforesaid every proprietor or proprietors of any such original model copy or cast and every proprietor or proprietors of any such original model or copy or cast in alto or basso relievo or any such work as aforesaid, or the proprietor or pro-

Person making Copies of any Model or Cast, without the written Consent of the Proprietor, may be prosecuted for Damages, by a special Action on the Case.

No. X.
38 Geo. III. c. 71.

prietors of any such new cast from nature as aforesaid respectively, shall and may by and in a special action upon the case to be brought against the person or persons so offending recover such damages as a jury on the trial of such action or on the execution of a writ of enquiry thereon shall give or assess together with full costs of suit.

Except such Persons who shall purchase the same of the original Proprietor.

III. Provided nevertheless, That no person who shall hereafter purchase the right either in any such model copy or cast or in any such model copy or cast in alto or basso relievo or any such work as aforesaid or any such new cast from nature of the original proprietor or proprietors thereof shall be subject to any action for vending or selling any cast or copy from the same; any thing contained in this Act to the contrary hereof notwithstanding.

Limitation of Actions.

IV. Provided also, That all actions to be brought as aforesaid against any person or persons for any offence committed against this Act shall be commenced within six calendar months next after the discovery of every such offence and not afterwards.

[No. XI.] 41 George III. c. 107.—An Act for the further Encouragement of Learning, in the United Kingdom of *Great Britain* and *Ireland*, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns for the Time herein mentioned.—[2*d July* 1801.]

41 George III. c. 107.

Authors of Books already composed, and not printed or published, and of Books to be hereafter composed, and their Assigns shall have the sole Right of printing them for Fourteen Years:

Booksellers, &c. in any Part of the United Kingdom, or British European Dominions, who shall print, reprint, or import, &c. any such Book without Consent of the Proprietor, shall be liable to an Action for Damages, and shall also forfeit the Books to the Proprietor, and 3*d.* per Sheet. Half to the King, and Half to the Informer.

'WHEREAS it is expedient that further protection should be afforded 'to the authors of books and the purchasers of the copies and copy-'right of the same in the United Kingdom of *Great Britain* and *Ireland*;' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That the author of any book or books already composed and not printed or published and the author of any book or books which shall hereafter be composed and the assignee or assigns of such authors respectively shall have the sole liberty of printing and reprinting of such book and books for the term of fourteen years, to commence from the day of first publishing the same and no longer; and that if any other bookseller printer or other person whosoever in any part of the said United Kingdom or in any part of the *British* dominions in *Europe* shall from and after the passing of this Act print reprint or import or shall cause to be printed reprinted or imported any such book or books without the consent of the proprietor or proprietors of the copyright of and in such book or books first had and obtained in writing, signed in the presence of two or more credible witnesses, or knowing the same to be so printed reprinted or imported without such consent of such proprietor or proprietors shall sell publish or expose to sale or cause to be sold published or exposed to sale, or shall have in his her or their possession for sale any such book or books without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case at the suit of the proprietor or proprietors of the copyright of such book or books so unlawfully printed reprinted or imported or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid contrary to the true intent and meaning of this Act; and every such proprietor and proprietors shall and may by and in such special action upon the case to be so brought against such offender or offenders in any court of record in that part of the said United Kingdom or of the *British* dominions in *Europe* in which the offence shall be committed, recover such damages as the jury on the trial of such action or on the execution of a writ of enquiry thereon shall give or assess together with double costs of suit; in which action no wager of law essoign privilege or protection nor more than one imparlance shall be allowed; and all and every such

offender or offenders shall also forfeit such book or books and all and every sheet and sheets being part of such book or books, and shall deliver the same to the proprietor or proprietors of the copyright of such book or books upon order of any court of record in which any action or suit in law or equity shall be commenced or prosecuted by such proprietor or proprietors, to be made on motion or petition to the said court; and the said proprietor or proprietors shall forthwith damask or make waste paper of the said book or books and sheet or sheets respectively; and all and every such offender or offenders shall also forfeit the sum of three pence for every sheet which shall be found in his or their custody, either printed or printing or published or exposed to sale contrary to the true intent and meaning of this Act, the one moiety thereof to the King's most excellent Majesty his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same in any such court of record by action of debt bill plaint or information, in which no wager of law essoign privilege or protection nor more than one imparlance shall be allowed: Provided always, That after the expiration of the said term of fourteen years the right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

Authors have a second 14 Years' Term, if living.

II. Provided also and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to any book or books heretofore composed and printed or published in any part of the said United Kingdom, nor to exempt or indemnify any person or persons whomsoever from or against any penalties or actions to which he she or they shall or may have become or shall or may hereafter be liable for or on account of the unlawful printing reprinting or importing such book or books, or the selling publishing or exposing the same to sale or the having the same in his or their possession for sale contrary to the laws and statutes in force respecting the same at the time of the passing an Act in the session of Parliament of the thirty-ninth and fortieth years of the reign of his present Majesty, intituled *An Act for the Union of* Great Britain *and* Ireland.

Act shall not extend to Books already published, nor indemnify against Penalties under former Acts in force at the Union of Great Britain and Ireland. 39 & 40 Geo. 3. c. 67.

III. 'And whereas authors have heretofore bequeathed given or assigned and may hereafter bequeath give or assign the copies or copyrights of and in books composed by them to or in trust for the college of the Holy Trinity of *Dublin;* and in and by their several wills or other instruments have directed or may direct that the profits arising from the printing or re-printing such books shall be applied or appropriated as a fund for the advancement of learning and other beneficial purposes of education within the college aforesaid: And whereas such useful purposes will frequently be frustrated unless the sole right of printing and re-printing of such books, the copies of which shall have been or shall be so bequeathed given or assigned as aforesaid, be preserved and secured to the said college in perpetuity;' Be it therefore further enacted, That the said college shall at their own printing press within the said college have for ever the sole liberty of printing and reprinting all such books as shall at any time hereafter have been or (not having been heretofore published or assigned) shall at any time hereafter be bequeathed or otherwise given or assigned by the author or authors of the same respectively, or the representatives of such author or authors to or in trust for the said college for the purposes aforesaid, unless the same shall have been bequeathed given or assigned or shall hereafter be bequeathed given or assigned for any term of years or any other limited term; any law or usage to the contrary thereof in any wise notwithstanding; and that if any printer bookseller or other person whosoever shall from and after the passing of this Act unlawfully print reprint or import or cause to be printed reprinted or imported, or knowing the same to be so unlawfully printed reprinted or imported, shall sell publish or expose to sale or cause to to be sold published or exposed to sale, or have in his or their possession for sale any such last-mentioned book or books, such offender or offenders shall be subject and liable to the like actions penalties and forfeitures as are herein-before mentioned and contained with

Trinity College, Dublin, shall for ever have the sole Right of printing Books given or bequeathed to them, unless they are given, &c. for a limited time only.

Penalty on Persons printing such Books the same as under § 1.

No. XI.
41 Geo. III. c. 107.

To extend only to Books printed at the College Press.

respect to offenders against the copyrights of authors and their assigns: Provided nevertheless, That nothing in this Act shall extend to grant any exclusive right to the said college of the Holy Trinity of *Dublin* otherwise than so long as the books or copies belonging to the said college are and shall be printed only at the printing press of the said college within the said college and for the sole benefit and advantage of the said college; and that if the said college shall delegate grant lease or sell the copyrights or exclusive rights of printing the books hereby granted or any part thereof, or shall allow permit or authorise any person or persons or bodies corporate to print or reprint the same, then the privilege hereby granted shall become void and of no effect in the same manner as if this Act had not been made; but the said college shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid in like manner as any author or authors can or may lawfully do under the provisions of this Act or any other Act now in force.

But the College may sell their Copyrights.

Booksellers, &c. shall not be liable to the Penalty of 3*d.* per Sheet,

unless the Title to the Copyright be entered by the Proprietor, &c. at Stationers' Hall, London; nor if the Consent of the Proprietor be so entered.

IV. Provided also and be it further enacted, That no bookseller printer or other person whosoever shall be liable to the said penalty of three pence *per* sheet for or by reason of the printing reprinting importing or selling of any such book or books or the having the same in his or their custody for sale without the consent of the proprietor or proprietors of the copyright thereof as aforesaid, unless before the time of the publication of such book or books by the proprietor or proprietors thereof (other than the said college) the right and title of such proprietor or proprietors shall be duly entered in the register book of the Company of Stationers in *London* in such manner as hath been usually heretofore done by the proprietors of copies and copyrights in *Great Britain;* nor if the consent of such proprietor or proprietors for the printing reprinting importing or selling such book or books shall be in like manner entered; nor unless the right and title of the said college to the copyright of such book or books as has or have been already bequeathed given or assigned to the said college be entered in the said register book before the twenty-ninth day of *September* one thousand eight hundred and one, and of all and every such book or books as may or shall hereafter be bequeathed given or assigned as aforesaid be entered in the said register book within the space of two months after any such bequest gift or assignment shall have come to the knowledge of the provost of the said college; for every of which several entries six pence shall be paid and no more; which said register book shall at all times be kept at the hall of the said Company and shall and may at all seasonable and convenient times be resorted to and inspected by any bookseller printer or other person for the purposes before mentioned without any fee or reward; and the clerk of the said Company of Stationers shall when and as often as thereto required give a certificate under his hand of such entry or entries and for every such certificate may take a fee not exceeding six pence; and the said clerk shall also without fee or reward within fifteen days next after the thirty-first day of *December* and the thirtieth day of *June* in each and every year make or cause to be made for the use of the said college a list of the titles of all such books, the copyright to which shall have been so entered in the course of the half year immediately preceding the said thirty-first day of *December* and the thirtieth day of *June* respectively, and shall upon demand deliver the said lists or cause the same to be delivered to any person or persons duly authorised to receive the same for and on behalf of the said college.

Clerk of the Company shall give Certificates of Entries, and make a half-yearly List of the Books so entered for the Use of Trinity College.

If the Clerk refuses to make Entries, &c. Parties may give Notice in the London Gazette, and the Clerk shall forfeit 20*l.*

V. Provided also and be it further enacted, That if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries or to give such certificate or certificates being thereupon respectively required by the author or authors proprietor or proprietors of such copies or copyrights, or by the person or persons to whom such consent shall be given or by some person on his or their behalf in the presence of two or more credible witnesses, then such party or parties so refused, notice being first duly given by advertisement in the *London Gazette*, shall have the like benefit as if such entry or entries certificate or certificates had been duly made and given; and the clerk so refusing

shall for any such offence forfeit to the author or proprietor of such copy or copies or to the person or persons to whom such consent shall be given the sum of twenty pounds; or if the said clerk shall refuse or neglect to make the list aforesaid or to deliver the same to any person duly authorised to demand the same on behalf of the said college the said clerk shall also forfeit to the said college the like sum of twenty pounds; which said respective penalties shall and may be recovered in any of his Majesty's courts of record in the said United Kingdom by action of debt bill plaint or information, in which no wager of law essoign or protection nor more than one imparlance shall be allowed.

Two additional Copies of Books entered at Stationers' Hall, shall be delivered there for the Use of the Libraries of Trinity College, and the King's Inns, Dublin.

VI. Provided also and be it further enacted, That from and after the passing of this Act, in addition to the nine copies now required by law to be delivered to the warehouse-keeper of the said Company of Stationers of each and every book and books which shall be entered in the register book of the said Company, one other copy shall be in like manner delivered for the use of the library of the said college of the Holy Trinity of *Dublin*, and also one other copy for the use of the library of the society of the King's Inns *Dublin*, by the printer or printers of all and every such book and books as shall hereafter be printed and published and the title to the copyright whereof shall be entered in the said register book of the said Company; and that the said college and the said society shall have the like remedies for enforcing the delivery of the said copies; and that all proprietors booksellers and printers and the warehouse-keeper of the said Company shall be liable to the like penalties for making default in delivering the said copies for the use of the said college and the said society as are now in force with respect to the delivering or making default in delivering the nine copies now required by law to be delivered in manner aforesaid.

No Person shall import into any Part of the United Kingdom for Sale any Book first composed, &c. within the United Kingdom, and reprinted elsewhere.

Penalty on importing, selling, or keeping for Sale any such Books, Forfeiture thereof, and also 10*l.* and Double the Value.

Books may be seized by Officers of Customs or Excise, who shall be rewarded.

Exceptions as to Books not having been printed in the United Kingdom for 20 Years, &c.

VII. And be it further enacted, That from and after the passing of this Act it shall not be lawful for any person or persons whomsoever to import or bring into any part of the said United Kingdom of *Great Britain* and *Ireland* for sale any printed book or books first composed written or printed and published in any part of the said United Kingdom and reprinted in any other country or place whatsoever; and if any person or persons shall import or bring or cause to be imported or brought for sale any such printed book or books into any part of the said United Kingdom contrary to the true intent and meaning of this Act, or shall knowingly sell publish or expose to sale or have in his or their possession for sale any such book or books, then every such book or books shall be forfeited and shall and may be seized by any officer or officers of Customs or Excise and the same shall be forthwith made waste paper; and all and every person and persons so offending, being duly convicted thereof, shall also for every such offence forfeit the sum of ten pounds and double the value of each and every copy of such book or books which he she or they shall so import or bring or cause to be imported or brought into any part of the said United Kingdom, or shall knowingly sell publish or expose to sale or shall cause to be sold published or exposed to sale, or shall have in his or their possession for sale contrary to the true intent and meaning of this Act; and the commissioners of Customs in *England* *Scotland* and *Ireland* respectively (in case the same shall be seized by any officer or officers of Customs), and the commissioners of Excise in *England* *Scotland* and *Ireland* respectively (in case the same shall be seized by any officer or officers of Excise) shall also reward the officer or officers who shall seize any books which shall be so made waste paper of with such sum or sums of money as they the said respective commissioners shall think fit, not exceeding the value of such books; such reward respectively to be paid by the said respective commissioners out of any money in their hands respectively arising from the duties of Customs and Excise: Provided, that no person or persons shall be liable to any of the last-mentioned penalties or forfeitures for or by reason or means of the importation of any book or books which has not been printed or reprinted in some part of the said United Kingdom within twenty years next before the same shall be imported, or of any book or books reprinted abroad and

No. XI. 41 Geo. III. c. 107.

inserted among other books or tracts to be sold therewith in any collection where the greatest part of such collection shall have been first composed or written abroad.

General Issue.

VIII. And be it further enacted, That if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done any thing in pursuance of this Act, the defendants in such action may plead the general issue and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff become non-suited or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and

Limitation of Actions under this Act Six Months.

that all actions suits bills indictments or informations for any offence that shall be committed against this Act shall be brought sued and commenced within six months next after such offence committed, or else the same shall be void and of none effect.

[No. XII.] 54 George III. c. 56.—An Act to amend and render more effectual an Act of his present Majesty, for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned; and for giving further Encouragement to such Arts.—[18*th May* 1814.]

54 George III. c. 56.

38 Geo. 3. c. 1. § 1.

'WHEREAS by an Act passed in the thirty-eighth year of the reign of 'his present Majesty, intituled *An Act for encouraging the Art of 'making new Models and Casts of Busts, and other Things therein men- 'tioned;* the sole right and property thereof were vested in the original 'proprietors for a time therein specified: And whereas the provisions of 'the said Act having been found ineffectual for the purposes thereby 'intended, it is expedient to amend the same and to make other provisions 'and regulations for the encouragement of artists and to secure to them 'the profits of and in their works and for the advancement of the said 'arts:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same,

Sole Right and Property of all new and original Sculpture, Models, Copies, and Casts, vested in Proprietors for 14 Years.

That from and after the passing of this Act every person or persons who shall make or cause to be made any new and original sculpture or model or copy or cast of the human figure or human figures or of any bust or busts, or of any part or parts of the human figure clothed in drapery or otherwise, or of any animal or animals or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture or of any alto or basso-relievo representing any of the matters or things herein-before mentioned, or any cast from nature of the human figure or of any part or parts of the human figure, or of any cast from nature of any animal or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things herein-before mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture model copy and cast of the human figure and human figures and of all and in every such bust or busts and of all and in every such part or parts of the human figure clothed in drapery or otherwise, and of all and in every such new and original sculpture model copy and cast representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture model copy and cast of any subject being matter of invention in sculpture, and of all and in every such new and original sculpture model copy and cast in alto or basso-relievo representing any of the matters or things herein-before mentioned and of every such cast from nature. for the term of fourteen years from first putting forth or publish-

No. XII.
54 Geo. III.
c. 56.

ing the same; provided, in all and every case, the proprietor or proprietors do cause his her or their name or names with the date to be put on all and every such new and original sculpture model copy or cast and on every such cast from nature before the same shall be put forth or published.*

* Name and Date affixed.

II. And be it further enacted, That the sole right and property of all works which have been put forth or published under the protection of the said recited Act shall be extended continued to and vested in the respective proprietors thereof for the term of fourteen years to commence from the date when such last-mentioned works respectively were put forth or published.

Works published under Act, vested in Proprietors for Fourteen Years.

III. And be it further enacted, That if any person or persons shall within such term of fourteen years make or import or cause to be made or imported or exposed to sale or otherwise disposed of any pirated copy or pirated cast of any such new and original sculpture or model or copy or cast of the human figure or human figures or of any such bust or busts, or of any such part or parts of the human figure clothed in drapery or otherwise, or of any such work of any animal or animals or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things herein-before mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from or imitating in any way any of the matters or things put forth or published under the protection of this Act, or of any works which have been put forth or published under the protection of the said recited Act, the right and property whereof is and are secured extended and protected by this Act in any of the cases as aforesaid, to the detriment damage or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors or their assignee or assignees shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess together with double costs of suit.

Putting forth pirated Copies or pirated Casts prosecuted.

Damages. Double Costs.

IV. Provided nevertheless, That no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model or copy or cast, or of any cast from nature or of any of the matters and things published under or protected by virtue of this Act, of the proprietor or proprietors expressed in a deed in writing signed by him her or them respectively with his her or their own hand or hands in the presence of and attested by two or more credible witnesses, shall be subject to any action for copying or casting or vending the same; any thing contained in this Act to the contrary notwithstanding.

Purchasers of Copyright secured in same.

V. Provided always and be it further enacted, That all actions to be brought as aforesaid against any person or persons for any offence committed against this Act shall be commenced within six calendar months next after the discovery of every such offence and not afterwards.

Limitation of Actions.

VI. Provided always and be it further enacted, That from and immediately after the expiration of the said term of fourteen years the sole right of making and disposing of such new and original sculpture or model or copy or cast of any of the matters or things herein-before mentioned shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself herself or themselves of such right of making or disposing of any new and original sculpture or model or copy or cast of any of the matters or things herein-before mentioned previous to the passing of this Act.

Additional Term of Fourteen Years, in case Maker of original Sculpture, &c. shall be living.

[No. XIII.] 54 George III. c. 156.—An Act to amend the several Acts for the Encouragement of Learning, by

No. XIII. 54 Geo. III. c. 156.

securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns.—[29*th July* 1814.]

54 Geo. III. c. 156.

8 Anne, c. 19. § 5.

'WHEREAS by an Act made in the eighth year of the reign of her late Majesty Queen *Anne*, intituled *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned*, it was among other things, provided and enacted, That nine copies of each book or books upon the best paper that from and after the tenth day of April one thousand seven hundred and ten should be printed and published as in the said Act mentioned, or reprinted and published with additions, should by the printer and printers thereof be delivered to the warehouse-keeper of the Company of Stationers for the time being at the hall of the said Company before such publication made for the use of the royal library, the libraries of the universities of *Oxford* and *Cambridge*, the libraries of the four universities in *Scotland* the library of *Sion* College in *London*, and library of the Faculty of Advocates at *Edinburgh*; which said warehouse-keeper is by the said Act required to deliver such copies for the use of the said libraries; and that if any proprietor bookseller or printer or the said warehouse-keeper should not observe the directions of the said Act therein, that then he or they so making default in not delivering the said printed copies should forfeit besides the value of the said printed copies the sum of five pounds for every copy not so delivered: And whereas by an Act made in the forty-

41 G. 3. (U.K.) c. 107. § 6.

first year of the reign of his present Majesty, intituled *An Act for the further Encouragement of Learning in the United Kingdom of* Great Britain *and* Ireland, *by securing the Copies and Copyright of printed Books to the Authors of such Books or their assigns for the time herein mentioned*, it is amongst other things provided and enacted, That in addition to the nine copies required by law to be delivered to the warehouse-keeper of the said Company of Stationers of each and every book and books which shall be entered in the register books of the said company two other copies shall in like manner be delivered for the use of the library of the college of the *Holy Trinity* and the library of the society of the *King's Inns* in *Dublin* by the printer and printers of all and every such book and books as should thereafter be printed and published and the title of the copyright whereof should be entered in the said register book of the said Company: And whereas it is expedient that copies of books hereafter printed or published should be delivered to the libraries herein-after mentioned with the modifications that shall be provided by this Act;' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That so much of the said several recited Acts of the eighth year of Queen *Anne* and of the forty-first year of his present Majesty as requires that any copy or copies of any book or books which shall be printed or published, or reprinted and published with additions, shall be delivered by the printer or printers thereof to the warehouse-keeper of the said Company of Stationers for the use of any of the libraries in the said Act mentioned and as requires the delivery of the said copies by the said warehouse-keeper for the use of the said libraries, and as imposes any penalty on such printer or warehouse-keeper for not delivering the said copies shall be and the same is hereby repealed

repealed.

Eleven printed Copies delivered on Demand within Twelve Months after Publication for Use of public Libraries.

II. And be it further enacted, That eleven printed copies of the whole of every book and of every volume thereof upon the paper upon which the largest number or impression of such book shall be printed for sale, together with all maps and prints belonging thereto, which from and after the passing of this Act shall be printed and published on demand thereof being made in writing to or left at the place of abode of the publisher or publishers thereof at any time within twelve months next

after the publication thereof under the hand of the warehouse-keeper of the Company of Stationers or the librarian or other person thereto authorized by the persons or body politic and corporate proprietors or managers of the libraries following, *videlicet*, the *British Museum Sion College* the *Bodleian Library* at *Oxford* the *Public Library* at *Cambridge* the library of the *Faculty of Advocates* at *Edinburgh*, the libraries of the four universities of *Scotland Trinity College Library* and the *King's Inns Library* at *Dublin*, or so many of such such eleven copies as shall be respectively demanded on behalf of such libraries respectively, shall be delivered by the publisher or publishers thereof respectively within one month after demand made thereof in writing as aforesaid to the warehouse-keeper of the said Company of Stationers for the time being; which copies the said warehouse-keeper shall and he is hereby required to receive at the hall of the said Company for the use of the library for which such demand shall be made within such twelve months as aforesaid; and the said warehouse-keeper is hereby required within one month after any such book or volume shall be so delivered to him as aforesaid to deliver the same for the use of such library: and if any publisher or the warehouse-keeper of the said Company of Stationers shall not observe the directions of this Act therein, that then he and they so making default in not delivering or receiving the said eleven printed copies as aforesaid shall forfeit besides the value of the said printed copies the sum of five pounds for each copy not so delivered or received together with the full costs of suit; the same to be recovered by the person or persons or body politic or corporate proprietors or managers of the library for the use whereof such copy or copies ought to have been delivered or received; for which penalties and value such person or persons body politic or corporate is or are now hereby authorized to sue by action of debt or other proper action in any court of record in the United Kingdom.

Publishers, &c. neglecting.

Penalty.

III. Provided always and be it further enacted, That no such printed copy or copies shall be demanded by or delivered to or for the use of any of the libraries herein-before mentioned of the second edition or of any subsequent edition of any book or books so demanded and delivered as aforesaid, unless the same shall contain additions or alterations: and in case any edition after the first of any book so demanded and delivered as aforesaid shall contain any addition or alteration no printed copy or copies thereof shall be demanded or delivered as aforesaid, if a printed copy of such additions or alterations only printed in an uniform manner with the former edition of such book be delivered to each of the libraries aforesaid, for whose use a copy of the former edition shall have been demanded and delivered as aforesaid: Provided also, that the copy of every book that shall be demanded by the *British Museum* shall be delivered of the best paper on which such work shall be printed.

No Copies of Second, &c. Edition, without Addition or Alteration, demanded;

Additions printed, and delivered separate.

Proviso for British Museum.

IV. 'And whereas by the said recited Acts of the eighth year of 'Queen *Anne* and the forty-first year of his present Majesty's reign it is 'enacted, that the author of any book or books and the assignee or assigns 'of such author respectively, should have the sole liberty of printing and 'reprinting such book or books for the term of fourteen years, to com- 'mence from the day of first publishing the same and no longer; and 'it was provided, that after the expiration of the said term of four- 'teen years, the right of printing or disposing of copies should return to 'the authors thereof, if they were then living, for another term of four- 'teen years: And whereas it will afford further encouragement to litera- 'ture if the duration of such copyright were extended in manner herein- 'after mentioned;' Be it further enacted, That from and after the passing of this Act the author of any book or books composed and not printed and published, or which shall hereafter be composed and be printed and published (1) and his assignee or assigns shall have the sole liberty of

8 Anne, c. 19. § 1.
41 G. 3. (U. K.) c. 107. § 1.

Instead of Copyright for Fourteen Years, and contingently for Fourteen more, Authors, &c. shall have Twenty-eight Years' Copyright in Works, and for Residue of Life.

(1.) This Statute does not impose upon Authors, as a condition precedent to their deriving any benefit under that Act, that the composition should be first printed; and therefore an Author does not lose his Copyright by selling his work in manuscript before it is printed.—White *v.* Gerock, 2 B. & A. 298.

No. XIII. 54 Geo. III. c. 156.

printing and reprinting such book or books for the full term of twenty-eight years to commence from the day of first publishing the same, and also if the author shall be living at the end of that period for the residue of his natural life; (2.) and that if any bookseller or printer or other person whatsoever in any part of the United Kingdom of *Great Britain* and *Ireland* in the Isles of *Man Jersey* or *Guernsey* or in any other part of the *British* dominions shall from and after the passing of this Act, within the terms and times granted and limited by this Act as aforesaid, print reprint or import or shall cause to be printed reprinted or imported any such book or books without the consent of the author or authors or other proprietor or proprietors of the copyright of and in such book and books first had and obtained in writing; or knowing the same to be so printed reprinted or imported without such consent of such author or authors or other proprietor or proprietors, shall sell publish or expose to sale or cause to be sold published or exposed to sale or shall have in his or their possession for sale any such book or books without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case at the suit of the author or authors or other proprietor or proprietors of the copyright of such book or books so unlawfully printed reprinted or imported or published or exposed to sale or being in the possession of such offender or offenders for sale as aforesaid contrary to the true intent and meaning of this Act: and every such author or authors or other proprietor or proprietors shall and may by and in such special action upon the case to be so brought against such offender or offenders in any court of record in that part of the said United Kingdom or of the *British* dominions in which the offence shall be committed, recover such damages as the jury on the trial of such action or on the execution of a writ of enquiry thereon, shall give or assess together with double costs of suit; in which action no wager of law essoign privilege or protection nor more than one imparlance shall be allowed; and all and every such offender and offenders shall also forfeit such book or books and all and every sheet being part of such book or books, and shall deliver the same to the author or authors or other proprietor or proprietors of the copyright of such book or books upon order of any court of record in which any action or suit in law or equity shall be commenced or prosecuted by such author or authors or other proprietor or proprietors to be made on motion or petition to the said court; and the said author or authors or other proprietor or proprietors shall forthwith damask or make waste paper of the said book or books and sheet or sheets; and all and every such offender or offenders shall also forfeit the sum of three pence for every sheet thereof either printed or printing or published or exposed to sale contrary to the true intent and meaning of this Act; the one moiety thereof to the King's most excellent Majesty his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same in any such court of record by action of debt bill plaint or information, in which no wager of law essoign privilege or protection nor more than one imparlance shall be allowed: Provided always, that in *Scotland* such offender or offenders shall be liable to an action of damages in the court of session in *Scotland*, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there; and in any such action where damages shall be awarded double costs of suit or expences of process shall be allowed.

Booksellers, &c. in any Part of United Kingdom, or British Dominions, who shall print, &c. any Book, without Consent of Proprietor, liable to Action for Damages.

Penalty.

Penalty.

Offenders in Scotland.

Within what Time Title of Books entered at Stationers' Hall.

V. And in order to ascertain what books shall be from time to time published, Be it enacted, That the publisher or publishers of any and every book demandable under this Act, which shall be published at any time after the passing of this Act, shall within one calendar month after the day on which any such book or books respectively shall be first sold published advertised or offered for sale within the bills of mortality, or within three calendar months if the said book shall be sold published or

(2.) An Author whose works had been published more than twenty-eight years before the passing of the 54 Geo. 3. c. 156. is not entitled to the Copyright for life.—Brooke *v.* Clarke, 1 B. & A. 396.

advertised in any other part of the United Kingdom enter the title to the copy of every such book and the name or names and place of abode of the publisher or publishers thereof in the register book of the Company of Stationers in *London*, in such manner as hath been usual with respect to books the title whereof hath heretofore been entered in such register book, and deliver one copy on the best paper as aforesaid for the use of the *British Museum*; which register book shall at all times be kept at the hall of the said Company; for every of which several entries the sum of two shillings shall be paid and no more; which said register book may at all seasonable and convenient times be resorted to and inspected by any person; for which inspection the sum of one shilling shall be paid to the warehouse-keeper of the said Company of Stationers, and such warehouse-keeper shall when and as often as thereto required, give a certificate under his hand of every or any such entry, and for every such certificate the sum of one shilling shall be paid; and in case such entry of the title of any such book or books shall not be duly made by the publisher or publishers of any such book or books within the said calendar month or three months as the case may be, then the publisher or publishers of such book or books shall forfeit the sum of five pounds together with eleven times the price at which such book shall be sold or advertised, to be recovered together with full cost of suit by the person or persons body politic or corporate authorised to sue and who shall first sue for the same in any court of record in the United Kingdom by action of debt bill plaint or information, in which no wager of law essoign privilege or protection nor more than one imparlance shall be allowed: Provided always, That in the case of magazines reviews or other periodical publications, it shall be sufficient to make such entry in the register book of the said Company within one month next after the publication of the first number or volume of such magazine review or other periodical publication: Provided always, That no failure in making any such entry shall in any manner affect any copyright, but shall only subject the person making default to the penalty aforesaid under this Act.

Copy for British Museum.

Inspection of Register Book.

Certificate.

Title of Book not entered.

Penalty.

Proviso for Magazines, &c.

Proviso.

VI. And be it further enacted, That the said warehouse-keeper of the Company of Stationers shall from time to time and at all times, without any greater interval than three months, transmit to the librarian or other person authorised on behalf of the libraries before mentioned correct lists of all books entered in the books of the said Company and not contained in former lists; and that on being required so to do by the said librarians or other authorised person or either of them, he shall call on the publisher or publishers of such books for as many of the said copies as may have been demanded of them.

Warehouse-keeper of Stationers' Hall to transmit to Librarians Lists of Books entered; and call on Publisher for Copies.

VII. Provided always and be it further enacted, That if any publisher shall be desirous of delivering the copy of such book or volume as aforesaid as shall be demanded on behalf of any of the said libraries at such library, it shall and may be lawful for him to deliver the same at such library to the librarian or other person authorised to receive the same (who is hereby required to receive and to give a receipt in writing for the same); and such delivery shall to all intents and purposes of this Act be as equivalent to a delivery to the said warehouse-keeper.

Publishers to deliver Books at Library.

What deemed Delivery.

VIII. And whereas it is reasonable that authors of books already published and who are now living should also have the benefit of the extension of copyright; Be it further enacted, That if the author of any book or books which shall not have been published fourteen years at the time of passing this Act shall be living at the said time, and if such author shall afterwards die before the expiration of the said fourteen years, then the personal representative of the said author and the assignees or assigns of such personal representative shall have the sole right of printing and publishing the said book or books for the further term of fourteen years after the expiration of the first fourteen years: Provided that nothing in this Act contained shall affect the right of the assignee or assigns of such author to sell any copies of the said book or books which shall have been printed by such assignee or assigns within the first fourteen years or the terms of any contract between such author and such assignee or assigns.

Authors of Books published, now living, to have Benefit of Extension of Copyright.

Proviso.

No. XIII.
54 Geo. III. c. 156.

Authors living at End of 28 Years sole Right of Publication for Life.

IX. And be it also further enacted, That if the author of any book or books which have been already published shall be living at the end of twenty-eight years after the first publication of the said book or books, he or she shall for the remainder of his or her life have the sole right of printing and publishing the same. Provided that this shall not affect the right of the assignee or assigns of such author to sell any copies of the said book or books which shall have been printed by such assignee or assigns within the said twenty-eight years or the terms of any contract between such author and such assignee or assigns.

Limitation of Actions.

X Provided nevertheless and be it further enacted, That all actions suits bills indictments or informations for any offence that shall be committed against this Act shall be brought sued and commenced within twelve months next after such offence committed, or else the same shall be void and of no effect.

PART III.

CLASS II.

*Trade, Navigation, Ship-Owners, Mariners, and Fisheries.**

[No. I.] 38 Edward III. stat. 1. c. 8.—A Ship shall not be lost for a small Thing therein not customed.

38 Edw. III. stat. 1. c. 8.

" ITEM, Whereas the ships of divers people of the realm be arrested " and holden forfeit, because of a little thing put in their ship not " customed, whereof the owners of the same ships be ignorant;' ' It is ' accorded and assented, That no owner shall lose his ship from the † ' *fifteenth* day of *February* next coming forth, for such a small thing put ' within the ship not customed without his knowledge.' (1.)

† Sixteenth.

* Some of the Acts included in this class relate more particularly to matters of official regulation and to a peculiar branch of trade, than those which fall within the general plan of the work—but are inserted on account of their importance, and the frequency of their becoming the subject of discussion. But it is not proposed to advert to the more minute regulations upon the subject, as affected by modern statutes, with respect to particular places or articles of traffick. A full view of the nature and progress of the system connected with Statute 12 Charles II. commonly called the Navigation Act, down to the year 1792, is contained in Mr. Reeve's History of the Law of Shipping and Navigation.

(1.) It is stated in Reeve's History of the Law of Shipping and Navigation, p. 269, that it seems now to be the prevailing opinion, that this statute is not repealed by subsequent Acts, however absolute in their prohibition, and that it ought to have its influence in construing cases of forfeiture; but that Stat. 27 Ed. III. c. 19. (which provides generally that no merchant or other shall lose or forfeit his goods or merchandize for the trespass or forfeiture of his servant, if not done by the command or authority of his master,) is not understood in the same light. He adds, (what is proved by daily practice,) that instances frequently occur where forfeitures arise from the conduct of the clerk, but to allow this as a plea would open a door to all sorts of fraud.

[No. II.] 12 Charles II. c. 18.—An Act for the Encouraging and Increasing of Shipping and Navigation.

12 Car. II. c. 18.

No Goods shall be imported from the Plantations, but in English Ships. 5 El. c. 5.

' FOR the increase of shipping and encouragement of the navigation ' of this nation, wherein under the good providence and protection ' of God, the wealth safety and strength of this kingdom is so much ' concerned;' Be it enacted by the King's most excellent Majesty, and by the Lords and Commons in this present Parliament assembled, and by the authority thereof, That from and after the first day of *December* one thousand six hundred and sixty and from thenceforward no goods or commodities whatsoever shall be imported (1.) into or exported out of

(1.) As to what shall be deemed an importation see several opinions in Reeve's S. & N. p. 256. et seq. and the case of the Procurator General *v.* Barro, Note to 15 Charles II. c. 7. post. In the case of the Eleanor, Edwards' Admiralty Reports, 135. Sir Wm. Scott said, " It is, I presume, an universal rule, that the mere act of coming into port, though without breaking bulk, is *primâ facie* evidence of an importation. At the same time this presumption may be rebutted; but it lies in the party to assign the other cause, and if the cause assigned turns out to be false the first presumption necessarily takes place, and the fraudulent importation must be fastened down upon him. —Real and irresistible distress must, be, at all times, a sufficient passport for human beings, under any such application of human laws. It must be an urgent distress—it must be something of great necessity—the danger must be such as to cause apprehension in the mind of an honest and

No. II.
12 Car. II. c. 18.

any lands islands plantations or territories (2.) to his Majesty belonging or in his possession or which may hereafter belong unto or be in the possession of his Majesty his heirs and successors in *Asia Africa* or *America*, in any other ship or ships vessel or vessels whatsoever but in such ships or vessels as do truly and without fraud belong only to the people of *England* or *Ireland* dominion of *Wales* or town of *Berwick upon Tweed*, or are of the built (3.) of and belonging to any the said lands islands plantations or territories as the proprietors and right owners thereof, and whereof the master and three-fourths of the marines (4.) at least are *English;* under the penalty of the forfeiture and loss of all the goods and commodities which shall be imported into or exported out of any the aforesaid places in any other ship or vessel, as also of the ship or vessel with all its guns furniture tackle ammunition and apparel; (5) one-third part thereof to

Penalty.
Explained 13 & 14 Car. 2. c. 11. sec. 6.

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firm man. I do not mean to say, that there must be an actual physical necessity existing at the moment—a moral necessity would justify the act; but there must be, at least, a moral necessity. Again, where the party justifies the act upon the plea of distress, it must not be distress which he has created himself by putting on board an insufficient quantity of provisions for such a voyage, for the distress is only a part of the mechanism of the fraud, and cannot be set up as an excuse for it; and in the next place, the distress must be proved by the claimant in a clear and satisfactory manner."—See other parts in this case in note to Stat. 26 Geo. III. c. 60. Sec. 8. post. See also, as to Importation, 1 Edwards' Appendix, E.

(2.) In the case of the Recovery, 6 Robinson, 346. Sir William Scott observes, that the Act is not limited by considerations of what territories belonged to Great Britain at the time of passing it, but applies prospectively to future acquisitions as well as to our more ancient possessions. Speaking of the East Indies he says, "It is well known that our establishments in that quarter of the world have stood on a very peculiar footing, which it has been perhaps the policy of this country not to define with great exactness. They may have assumed a different character at different times, and it may be very important in effect, and very proper in point of principle, that the general maxims of our navigation system should be applied to them in their present state, although there might have been a greater anomaly in practically applying them at a former period. With regard to the first, he had always entertained the notion that they had not been hitherto so applied. But a case occurred not many years since, (Wilson *v.* Marryat, 8 T. R. 31.) which brought the consideration of the question in a distinct form before the courts of common law. After repeated arguments and much deliberation, the Court of King's Bench expressed an opinion that the navigation laws did extend to those countries; and, in a writ of error, the judgment of the King's Bench was affirmed, with a complete adoption of the doctrine laid down.—(1 B. & P. 432.) An Act of Parliament was afterwards passed, (37 Geo. III. c. 97. § 22. and c. 117.) to quiet the alarm which had been occasioned by this exposition of the law, and to recognize in general terms the policy of admitting foreign vessels to a regulated trade on certain conditions, which the East India Company was empowered to impose." The decision of the case of the recovery was, that the *Prize Court* of the Admiralty would not virtually take cognizance of an infraction of the Navigation Act, which is only a municipal regulation in persons not British subjects, although with respect to a British subject, in whom the violation of the laws of his own country carries with it *malum in se*, it might be done.

The case of Wilson *v.* Marryat, mentioned in the above extract, did not turn immediately upon the question whether the British settlements in the East Indies were within the general operation of the Navigation Act; but it being taken for granted that they were so, the whole question in discussion related to the effect of a treaty allowing such trade to the subjects of the United States of America.

(3.) By 20 Geo. II. c. 45. prize ships, legally condemned, shall be considered as British-built ships.

(4.) By 13 Geo. II. c. 3. § 1—2. the King is entitled, in time of war, under certain regulations, to permit trading vessels to be manned with foreign seamen, not exceeding three fourths of the marines employed.

(5.) In Idle *v.* Vanneck, Bunt. 232. the Barons of the Exchequer held, that notice in the Register was not necessary to create a forfeiture upon this Act, though for a small matter they thought it hard that a ship should be condemned. In Gresby *v.* Palmer, *n. ibid.* Reynolds, C. B. put the point on this distinction, whether goods so brought were part or not of the cargo; and therefore if mariners or passengers privately bring over a small parcel of goods, that is not to be looked upon as part of the cargo, and it would be hard if the ship should be forfeited for that. In Mitchell *v.* Torup, Parker 227. Lord Chief Baron Parker gives an elaborate opinion, "That a forfeiture on Section 4, in respect of an importation of 221*lb.* of tea, was not prevented from attaching by the finding of the jury, that they had been put on board without the knowledge, privity, or consent of the master, mate, or owners." He observed, "that the words of the Act in the first, second, third, and fourth sections were all equally negative, absolute, and prohibitory, they operate both on the goods and the ship, and there is not a syllable that hints at the privity or consent of the master, mate, or owners." "The Reason," he added, "of penning the section in these strong

his Majesty his heirs and successors; one-third part to the governor of such land plantation island or territory, where such default shall be committed in case the said ship or goods be there seized, or otherwise that third part also to his Majesty his heirs and successors; and the other third part to him or them who shall (6.) seize inform or sue for the same in any court of record by bill information plaint or other action, wherein no essoign protection or wager of law shall be allowed; and all admirals and other commanders at sea of any the ships of war or other ship having commission from his Majesty or from his heirs or successors, are hereby authorised and strictly required to seize and bring in as prize all such ships or vessels as shall have offended contrary hereunto, and deliver them to the Court of Admiralty there to be proceeded against; and in case of condemnation, one moiety of such forfeitures shall be to the use of such admirals or commanders and their companies to be divided and proportioned amongst them according to the rules and orders of the sea in case of ships taken prize; and the other moiety to the use of his Majesty his heirs and successors.

Aliens shall not exercise the Occupation of Merchants or Factors in the Plantations.

II. And be it enacted, That no alien or person not born within the allegiance of our Sovereign Lord the King his heirs and successors or naturalized or made a free denizen, shall from and after the first day of *February* which will be in the year of our Lord one thousand six hundred and sixty-one, exercise the trade or occupation of a merchant or factor in any of the said places, upon pain of the forfeiture and loss of all his goods and chattels or which are in his possession; one-third to his Majesty his heirs and successors; one-third to the governor of the plantation where such person shall so offend; and the other third to him or them that shall inform or sue for the same in any of his Majesty's courts in the plantation where such offence shall be committed: and all governors of the said lands islands plantations or territories and every of them are hereby strictly required and commanded, and all who hereafter shall be made governors of any such islands plantations or territories by his Majesty his heirs or successors, shall before their entrance into their government take a solemn oath to do their utmost that every the aforementioned clauses, and all the matters and things therein contained, shall be punctually and *bona fide* observed according to the true intent and meaning thereof: and upon complaint and proof made before his Majesty his heirs and successors or such as shall be by him or them thereunto authorised and appointed, that any the said governors have been willingly and wittingly negligent in doing their duty accordingly, that the said governor so offending shall be removed from his government.

Governors, &c. of Plantations to take an Oath for the Observation of the afore-mentioned Clauses. Explained and enforced by 7 & 8 W. 3. c. 22. sec. 4.

For the Importation of Thrown Silk. see 2 W. & M. Sess. 1. c. 9.

III. And it is further enacted by the authority aforesaid, That no goods or commodities whatsoever of the growth production or manufacture of *Africa Asia* or *America* or of any part thereof, or which are described or laid down in the usual maps or cards of those places, be imported into *England Ireland* or *Wales* islands of *Guernsey* and *Jersey* or town of *Berwick upon Tweed*, in any other ship or ships vessel or vessels whatsoever but in such as do truly and without fraud belong only to the people of *England* or *Ireland* dominion of *Wales* or town of *Berwick upon Tweed*, or of the lands islands plantations or territories in *Asia Africa* or *America*, to his Majesty belonging as the proprietors and right owners

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terms was, to prevent as much as possible its being evaded; for, if the privity or consent of the master, mate or owners had been made necessary, the powers of the Act would have been defeated. In expounding Acts of Parliament, when words are express, plain, and clear, they ought to be understood according to their genuine and natural signification, unless by such exposition a contradiction or inconsistency would arise by reason of some subsequent clause, from whence it might be inferred that the intent of the Act was otherwise." He noticed the distinction made by C. B. Reynolds, as to whether goods were a part of the cargo or not which he recognized, but thought it did not apply to the case before him, for the quantity was not so small as to excuse the forfeiture.

(6) An action of detinue may be maintained upon this Act by a common informer.—Robert *v.* Wetherhead, 12 Mod. 92. 1 Salk. 223. 5 Mod. 195. Comb. 361. On trespass for taking a ship and plea that it was seized as forfeited under this Act, it is no answer to state in the replication that the defendant, without any sentence of condemnation, disposed of the ship for his own use. —Wilkins *v.* Despard, 5 T. R. 112.

No. II. 12 Car. II. c. 18.

thereof, and whereof the master and three-fourths at least of her mariners are *English;* under the penalty of the forfeiture of all such goods and commodities and of the ship or vessel in which they were imported, with all her guns tackle furniture ammunition and apparel; one moiety to his Majesty his heirs and successors; and the other moiety to him or them who shall seize inform or sue for the same in any court of record by bill information plaint or other action, wherein no essoign protection or wager of law shall be allowed.

No Goods of Foreign Growth or Manufacture shall be brought into England, &c. in English Ships, but only from the Places of their said Growth.

IV. And it is further enacted by the authority aforesaid, That no goods or commodities that are of foreign growth production or manufacture and which are to be brought into *England Ireland Wales* the islands of *Guernsey* and *Jersey* or town of *Berwick upon Tweed* in *English*-built shipping or other shipping belonging to some of the aforesaid places and navigated by *English* mariners as aforesaid, shall be shipped or brought from any other place or places country or countries, but only (7.) from those of the said growth production or manufacture, or from those ports where the said goods and commodities can only or are or usually have been first shipped for transportation (8.) and from none other places or countries, under the penalty of the forfeiture of all such of the aforesaid goods as shall be imported from any other place or country contrary to the true intent and meaning hereof, as also of the ship in which they were imported with all her guns furniture ammunition tackle and apparel; one moiety to his Majesty his heirs and successors, and the other moiety to him or them that shall seize inform or sue for the same in any court of record to be recovered as is before exprest.

Altered by 7 Ann. c. 8. sec. 12. as to American Drugs.

V. [All ling stockfish, &c. oil, &c. whale-fins, &c. imported, not caught in vessels by the proprietors themselves, &c. shall pay double aliens custom.]

Protestant Strangers are excepted by 10 & 11 W. 3. c. 24. § 13. and the Importation of Anchovies, &c. provided for by sec. 14.

No Goods to be laded or carried from one Part of England to another in the Vessel of any Alien not denizened, &c. The Penalty. 1 Salk. 223.

VI. And be it further enacted by the authority aforesaid, That from henceforth it shall not be lawful to any person or persons whatsoever to load or cause to be loaden and carried in any bottom or bottoms ship or ships vessel or vessels whatsoever, whereof any stranger or strangers-born (unless such as shall be denizens or naturalized) be owners part-owners or master, and whereof three-fourths of the mariners at least shall not be *English*, any fish victual wares goods commodities or things of what kind or nature soever the same shall be, from one port or creek of *England Ireland Wales* islands of *Guernsey* or *Jersey* or town of *Berwick upon Tweed* to another port or creek of the same or of any of them; under penalty for every one that shall offend contrary to the true meaning of this branch of this present Act, to forfeit all such goods as shall be loaden and carried in any such ship or vessel together with the ship or vessel and all her guns ammunition tackle furniture and apparel; one moiety to his Majesty his heirs and successors, and the other moiety to him or them that shall inform seize or sue for the same in any court of record to be recovered in manner aforesaid.

VII. [Abatement in the book of rates to extend only where three parts of the mariners be English.]

Goods of the Growth or Manufacture of Muscovy or Russia. Explained by 13 & 14 Car. 2. c. 11. sec. 23. 5 Mod. 193.

VIII. And it is further enacted by the authority aforesaid, That no goods or commodities of the growth production or manufacture of *Mus-*

(7.) Mr. Reeves, (p. 181.) after stating different opinions which had been given upon the subject, says, "Upon the whole it is judged not to be sufficient that the whole of the voyage is performed in a British ship, but it must be in the same ship, for if trans-shipping be allowed, it would be very difficult to prove whether the former voyage was performed in a legal way, and the provision might thus be easily evaded. However, where a ship has suffered such damage as to be unladen at some port, and the goods are put into another British vessel, the importation is always considered as a continuation of the first voyage. But this is a case of necessity, and it must be proved before the importation is allowed.

(8.) By 19 George III. c. 48. it is provided that this section should not be construed to permit any goods of the growth or production of Africa, Asia, or America, which shall be in any degree manufactured in foreign parts, to be imported into Great Britain, &c. unless manufactured in the country or place of which they were the growth and production, or in the place which such goods and commodities can be only or are first shipped, (leaving out *usually*, Reeves, 170.) and from no other country or place whatsoever.

covy or of any the countries dominions or territories to the great Duke or Emperor of *Muscovy* or *Russia* belonging, as also that no sort of masts timber or boards, no foreign salt pitch tar rosin hemp or flax raisins figs prunes olive oils, no sorts of corn or grain sugar pot-ashes wines vinegar or spirits called *aqua-vitæ* or brandy-wine, shall from and after the first day of *April* which shall be in the year of our Lord one thousand six hundred and sixty-one be imported into *England Ireland Wales* or town of *Berwick upon Tweed* in any ship or ships vessel or vessels whatsoever, but in such as do truly and without fraud belong to the people thereof or some of them as the true owners and proprietors thereof, and whereof the master and three-fourths of the mariners at least are *English*: and that no currants nor commodities of the growth production or manufacture of any of the countries islands dominions or territories to the *Othoman* or *Turkish* empire belonging, shall from and after the first day of *September* which shall be in the year of our Lord one thousand six hundred sixty-one, be imported into any of the afore-mentioned places in any ship or vessel but which is of *English* built and navigated as aforesaid and in no other, except only such foreign ships and vessels as are of the built of that country or place of which the said goods are the growth production or manufacture respectively, or of such port where the said goods can only be or most usually are first shipped for transportation, and whereof the master and three-fourths of the mariners at least are of the said county or place under the penalty and forfeiture of ship and goods to be disposed and recovered as in the foregoing clause. (9.)

Turkish Empire.

IX. Provided always, and be it hereby enacted by the authority aforesaid, That for the prevention of the great frauds daily used in colouring and concealing of aliens goods, all wines of the growth of *France* or *Germany* which from and after the twentieth day of *October* one thousand six hundred and sixty shall be imported into any the ports or places aforesaid in any other ship or vessel than which doth truly and without fraud belong to *England Ireland Wales* or town of *Berwick upon Tweed*, and navigated with the mariners thereof as aforesaid, shall be deemed aliens goods and pay all strangers customs and duties to his Majesty his heirs and successors, as also to the town or port into which they shall be imported; and that all sorts of masts timber or boards as also all foreign salt pitch tar rosin hemp flax raisins figs prunes olive oils all sorts of corn or grain sugar pot-ashes spirits commonly called *brandy wine* or *aqua-vitæ*, wines of the growth of *Spain* the islands of the *Canaries* or *Portugal Madeira* or western islands; and all the goods of the growth production or manufacture of *Muscovy* or *Russia*, which from and after the first day of *April* which shall be in the year of our Lord one thousand six hundred sixty-one shall be imported into any the aforesaid places in any other than such shipping, and so navigated; and all currants and *Turkey* commodities, which from and after the first day of *September* one thousand six hundred sixty-one shall be imported into any the places aforesaid in any other than *English*-built shipping and navigated as aforesaid, shall be deemed aliens goods and pay accordingly to his Majesty his heirs and successors and to the town or port into which they shall be imported.

Frauds in concealing Aliens Goods, how to be prevented.

X. [How to prevent frauds in colouring and buying foreign ships. See 13 & 14 *Car.* 2. c. 11. sec. 6. The oath to be administered.]

XI. [Officers of the Customs not to allow any privilege to any foreign-built ship, until certificate or proof, &c. Altered by 6 *Anne*, c. 37. sec. 21.]

XII. Provided always, That this Act or any thing therein contained Proviso for Goods of the Streights or Levant. In part repealed by 6 Geo. 1. c. 14.

(9) Where a licence was obtained and insurance effected from Riga to Hull, on goods the produce of Russia, on board a Swedish ship, but the ship sailed three days before the letter directing the licence to be obtained reached the agent; the letter having been delayed by contrary winds beyond the usual time, and the licence was obtained two days afterwards, and the insurance effected subsequently to that; held, that though the voyage was in its investion illegal, being contrary to 12 Car. 2. c. 18. sec. 8. nevertheless the assured might recover back the premium.—Hentig *v.* Staniforth, 5 M. & S. 122.

No. II. 12 Car. II. c. 18.

extend not or be meant to restrain and prohibit the importation of any the commodities of the *Streights* or *Levant seas* loaden in *English*-built shipping, and whereof the master and three-fourths of the mariners at least are *English*, from the usual ports or places for lading of them heretofore within the said *Streights* or *Levant seas*, though the said commodities be not of the very growth of the said places.

East India Commodities.

XIII. Provided also, That this Act or any thing therein contained extend not or be meant to restrain the importing of any *East India* commodities loaden in *English*-built shipping, and whereof the master and three-fourths of the mariners at least are *English*, from the usual place or places for lading of them in any part of those seas to the southward and eastward of *Cabo bona Esperanza*, although the said ports be not the very places of their growth.

Proviso for Goods imported from Spain, Portugal, Azores, Madeira, or Canary Islands.

XIV. Provided also, That it shall and may be lawful to and for any of the people of *England Ireland Wales* islands of *Guernsey* or *Jersey*, or town of *Berwick-upon-Tweed* in vessels or ships to them belonging, and whereof the master and three-fourths of the mariners at least are *English*, to load and bring in from any of the ports of *Spain* or *Portugal* or western islands commonly called *Azores* or *Madeira* or *Canary* islands, all sorts of goods or commodities of the growth, production or manufacture of the plantations or dominions of either of them respectively. (10.)

Proviso for Bullion, and Goods taken by way of Reprisal.

XV. Provided, That this Act or any thing therein contained extend not to bullion nor yet to any goods taken or that shall be *bonâ fide* taken by way of reprisal by any ship or ships belonging to *England Ireland* or *Wales* islands of *Guernsey* or *Jersey* or town of *Berwick-upon-Tweed*, and whereof the master and three-fourths of the mariners at least are *English*, having commission from his Majesty his heirs or successors.

XVI. [Proviso concerning goods of *Scotland*, goods of *Russia*.]

XVII. [The duty payable upon goods in *French* ships. Enforced by 13 & 14 *Car.* 2. c. 11. sec. 24. Enlarged as to rice and mellosses by 3 & 4 *Anne*, c. 5. sec. 12. and as to copper ore by 8 *Geo.* 1. c. 18. sec. 22.]

XVIII. And it is further enacted by the authority aforesaid, That from and after the first day of *April* which shall be in the year of our Lord one thousand six hundred sixty-one no sugars tobacco cotton-wool indigoes ginger fustick or other dyeing wood of the growth production or manufacture of any *English* plantations in *America Asia* or *Africa* shall be shipped carried conveyed or transported from any of the said *English* plantations to any land island territory dominion port or place whatsoever, other than to such other *English* plantations as do belong to his Majesty his heirs and successors or to the kingdom of *England* or *Ireland* or principality of *Wales* or town of *Berwick-upon-Tweed*, there to be laid on shore under the penalty of the forfeiture of the said goods or the full value thereof, as also of the ship with all her guns tackle apparel ammunition and furniture; the one moiety to the King's Majesty his heirs and successors, and the other moiety to him or them that shall seize inform or sue for the same in any court of record by bill plaint or information, wherein no essoign protection or wager of law shall be allowed.

Ships of England, sailing in any English Plantations, shall be bound to bring Goods there loaded into England, &c.

XIX. And be it further enacted by the authority aforesaid, That for every ship or vessel which from and after the five-and-twentieth day of

(10.) If a British subject, purchasing by the King's licence a hostile-built vessel, which is not entitled or required to have a British register, charters her on a voyage out to the Azores and home, and sends her to sea with a crew in which there is not the proportion of British mariners required by Stat. 12 Car. 2. c. 18. sec. 14. this does not avoid a policy on the outward part of the voyage; because non constat that the owners will not obtain a due proportion of British seamen before her return. Nor is it an objection to the same policy that she is foreign built; for held that the Stat. 49 Geo. 3. c. 60. sec. 1. authorises the ships of any country in amity, by the King's licence, to bring foreign produce to England, though not English-built or registered, contrary to sec. 3 & 10 of the Stat. 12 Car. 2. c. 18.; and that a ship purchased by a British subject from an enemy with licence, is the ship of a country in amity; and non constat that a licence to import will not be obtained before the act of importation is complete: and for the same reasons the insurance on the homeward part of the voyage was not illegal. Sewell *v.* the Royal Exchange Company, 4 Taunt. 856. and see Cohin *v.* Hannam, 5 Taunt. 701.

December in the year of our Lord one thousand six hundred and sixty shall set sail out of or from *England Ireland Wales* or town of *Berwick-upon-Tweed* for any *English* plantation in *America Asia* or *Africa*, sufficient bond shall be given with one surety to the chief officers of the custom-house of such port or place from whence the said ship shall set sail to the value of one thousand pounds if the ship be of less burthen than one hundred tons; and of the sum of two thousand pounds if the ship shall be of greater burthen: that in case the said ship or vessel shall load any of the said commodities at any of the said *English* plantations that the same commodities shall be by the said ship brought to some port of *England Ireland Wales* or to the port or town of *Berwick-upon-Tweed*, and shall there unload and put on shore the same, the danger of the seas only excepted: and for all ships coming from any other port or place to any of the aforesaid plantations who by this Act are permitted to trade there, that the governor of such *English* plantations shall before the said ship or vessel be permitted to load on board any of the said commodities, take bond, in manner and to the value aforesaid for each respective ship or vessel, that such ship or vessel shall carry all the aforesaid goods that shall be laden on board in the said ship to some other of his Majesty's *English* plantations or to *England Ireland Wales* or town of *Berwick-upon-Tweed*: and that every ship or vessel which shall load or take on board any of the aforesaid goods until such bond given to the said governor or certificate produced from the officers of any custom-house of *England Ireland Wales* or of the town of *Berwick*, that such bonds have been there duly given, shall be forfeited with all her guns tackle apparel and furniture, to be employed and recovered in manner as aforesaid; and the said governors and every of them shall twice in every year, after the first day of *January* one thousand six hundred and sixty, return true copies of all such bonds by him so taken to the chief officers of the Custom in *London*. [Confirmed by 13 *Car.* 2 stat. 1. c. 14.]

Farther Provisions relating to such Bonds.
7 & 8 W. 3. c. 22. sec. 13.
8 Anne, c. 13. sec. 23.
Repealed as to Ireland, by 22 & 23 Car. 2. c. 26. sec. 11. 22 & 23 Car. 2. c. 16. sec. 12.

[No. III.] 13 & 14 Charles II. c. 11.—An Act for preventing Frauds, and regulating Abuses in his Majesty's Customs.

VI. AND for the better increase of shipping and navigation, Be it further enacted, That the collectors and other officers of his Majesty's customs in all the ports of *England* shall forthwith give an account unto the collector and surveyor in the Port of *London* (appointed by his Majesty for all duties and matters relating to a late Act, intituled *An Act for encreasing and encouraging of Shipping and Navigation*) of all foreign-built ships in their ports owned and belonging to the people of *England* of what built and burthen they are for which certificates have been made according to the said Act, and that the said collector and surveyor shall make a true and perfect list of all such ships attested under their hands, and transmit the same into his Majesty's Court of Exchequer on or before the month of *December* in the year one thousand six hundred sixty and two there to remain upon record: and that no foreign-built ship (that is to say) not built in any of his Majesty's dominions of *Asia Africa* or *America*, or other than such as shall (*bonâ fide*) be bought before the first of *October* one thousand six hundred sixty and two next ensuing and expressly named in the said lists, shall enjoy the privilege of a ship belonging to *England* or *Ireland* although owned or manned by *English* (except such ships only as shall be taken at sea by letters of mart or reprisal and condemnation made in the Court of Admiralty as lawful prize) but all such ships shall be deemed as aliens' ships and be liable unto all duties that aliens ships are liable unto by virtue of the said Act for increase of shipping and navigation.

13 & 14 Car. II. c. 11. Account to be given of Foreign Ships.
12 Car. 2. c. 18.

Foreign-built Ships not to have Privilege, &c.

12 Car. 2. c. 18. Claimers to give Security of 30*l.* &c.

XXVIII. And be it further enacted, That all actions suits and informations to be had and commenced upon the Act *For encouraging and increasing of Shipping and Navigation*, or any clause or article therein, may be entered and prosecuted in his Majesty's Court of Exchequer at

8 Anne, c. 7. sec. 63.

No. III. 13 & 14 Car. II. c. 11.

Westminster; that upon all such suits and informations to be brought upon the Act of tonnage and poundage and the Act aforesaid, or any other Act or statute concerning the importation of goods or merchandize from the parts beyond the seas, if the property thereof be claimed by any person or persons as the importer thereof; in such case *onus probandi* shall lie upon the owner or claimer thereof.*

*Onus Probandi.

12 Car. 2. c. 18. Commission and Time to examine Witnesses.

XXIX. Provided, That in case the seizure or information shall be made upon any clause or thing contained in the late Act, intituled *An Act for the encouraging and increasing of Shipping and Navigation*, that then the defendant or defendants shall on his or their request have a commission out of the High Court of Chancery to examine witnesses beyond the seas, and have a competent time allowed for the return thereof before any trial shall be had upon the case, according to the distance of place where such commission or commissions are to be executed, and that the examination of witnesses so returned shall be admitted for evidence in law at the trial as if it had been given *viva voce* by the examinate in court; any law statute or usage to the contrary in any wise notwithstanding.

V. [No. IV.] 15 Charles II. c. 7.—An Act for the Encouragement of Trade.

15 Car. II. c. 7. Plantations beyond the Seas.

V. 'AND in regard his Majesty's plantations beyond the seas are inhabited and peopled by his subjects of this his kingdom of *England*, 'for the maintaining a greater correspondence and kindness between 'them and keeping them in a firmer dependence upon it, and rendering 'them yet more beneficial and advantageous unto it in the further em-'ployment and increase of *English* shipping and seamen, vent of *English* 'woollen and other manufactures and commodities, rendering the navi-'gation to and from the same more safe and cheap, and making this 'kingdom a staple not only of the commodities of those plantations but 'also of the commodities of other countries and places for the supplying 'of them; and it being the usage of other nations to keep their planta-'tions trade to themselves:'

Commodities of the Growth and Manufacture of Europe, how to be imported in English-built Shipping.

Repealed as to Irish Linen by 3 & 4 Anne, c. 8. sec. 1.

'13 & 14 Car. 2. c. 11.

VI. Be it enacted and it is hereby enacted, That from and after the five-and-twentieth day of *March* one thousand six hundred sixty-four no commodity of the growth production or manufacture of *Europe* shall be imported into any land island plantation colony territory or place to his Majesty belonging, or which shall hereafter belong unto or be in the possession of his Majesty his heirs and successors, in *Asia Africa* or *America* (*Tangier* only excepted) but what shall be *bonâ fide* and without fraud laden and shipped in *England Wales* or the town of *Berwick-upon-Tweed*, and in *English*-built shipping, or which were *bonâ fide* bought before the first day of *October* one thousand six hundred sixty and two, and had such certificate thereof as is directed in one Act passed the last sessions of this present Parliament, intituled *An Act for preventing Frauds and regulating Abuses in his Majesty's Customs;* and whereof the master and three fourths of the mariners at least are *English*, and which shall be carried directly thence to the said lands islands plantations colonies territories or places, and from no other place or places whatsoever; any law statute or usage to the contrary notwithstanding; under the penalty of the loss of all such commodities of the growth production or manufacture of *Europe* as shall be imported into any of them from any other place whatsoever by land or water; and if by water of the ship or vessel also in which they were imported, with all her guns tackle furniture ammunition and apparel; one third part to his Majesty his heirs and successors; one third part to the governor of such land island plantation colony territory or place into which such goods were imported, if the said ship vessel or goods be there seized or informed against and sued for, or otherwise that third part also to his Majesty his heirs and successors; and the other third part to him or them who shall seize inform or sue for the same in any of his Majesty's courts in such of the said lands islands

Penalty.

colonies plantations territories or places where the offence was committed, or in any court of record in *England* by bill information plaint or other action, wherein no essoign protection or wager of law shall be allowed (1.)

VII. Provided always and be it hereby enacted by the authority aforesaid, That it shall and may be lawful to ship and lade in such ships and so navigated as in the foregoing clause is set down and expressed, in any part of *Europe*, salt for the fisheries of *New England* and *Newfoundland*, and to ship and lade in the *Madeiras* wines of the growth thereof, and to ship and lade in the Western Islands of *Azores* wines of the growth of the said islands, and to ship and take in servants or horses in *Scotland* or *Ireland*, and to ship or lade in *Scotland* all sorts of victual of the growth or production of *Scotland*, and to ship or lade in *Ireland* all sorts of victual of the growth or production of *Ireland*, and the same to transport into any of the said lands islands plantations colonies territories or places; any thing in the foregoing clause to the contrary in any wise notwithstanding (2.).

Salt for Fisheries.

13 G. 1. c. 5.

(1.) It is under 15 Car. 2. c. 7. sec. 6. illegal to export manufactures, the produce of Europe, from the Cape of Good Hope to any port to the Eastward in his Majesty's possession. Nor is the operation of that Act suspended by the Order in Council of 12th April 1809, or 1st October, 1811. Gray *v.* Lloyd, 4 Taunt. 136.

(2.) The following note was taken by the editor at the hearing of the case, and the observations at the close of it were added recently afterwards, for the purpose of being inserted in a small collection (then intended to be published) of cases in the Courts of Doctors' Commons; but which intention, in consequence of the advice of those best competent to form a judgment of the probable reception of such a publication, was not carried into effect. The case of Wright and Netherwood, inserted in notes to 2 Salk. and *ante* p. 247, would also have formed a part of the intended publication:—

14th *May*, 1793.

IN THE COURT OF DELEGATES,

Before MR. JUSTICE BULLER,
MR. JUSTICE HEATH,
DR. BATTEN, and
DR. ARNOLD.

The Procurator-General against Barrow.

This case arose in the seizure of the Ship "Two Friends" and fifteen pipes of Madeira wine, under the authority of stat. 15 Charles II. c. 7. sections 5, 6, 7.

The vessel in question having been seized as forfeited at Jamaica, a claim was made there, which stated—

That she sailed from Lancaster for Jamaica with dry goods, part of which were to be landed at Madeira, another part at St. Eustatius, and the residue to be carried into Jamaica.

That she stopped at Madeira and left some of the dry goods there, and took on board twenty-five casks of Madeira wine, which were consigned to order at St. Eustatius or elsewhere. Certain consignees at St. Eustatius were to take so much of the wine as they thought that market required, and the rest was to go on to Jamaica. Those consignees only took ten casks, and the vessel proceeded to Jamaica with the rest which had not been landed. The master there delivered his papers, and made a report of the wine.

The facts of this claim were admitted, but the judge of the Vice-admiralty Court decreed the ship and wine to be forfeited.

The Admiralty Court of Great Britain reversed the sentence, and the case now came on upon an appeal from that judgment of reversal.

Dr. LAWRENCE, on behalf of the respondents, stated the case; and observed, that it arose upon a fact which was very frequent, and now first called in question. That no more was intended to be landed at St. Eustatius than the consignees there should require, and the rest remained water-bound the whole way. That this practice had always been permitted, and in the present instance was, with respect to the dry goods, authorised by the custom-house at Lancaster; and there was nothing attached upon the Madeira to which they were not equally liable. That the Madeira was not an European commodity—that the articles mentioned in the 7th section were not required to be directly carried; but if they were, this wine actually was carried directly, and there was no pretence to impute fraud.

The *King's Advocate General* (Sir WM. SCOTT) submitted to the Court, that, according to the facts stated, a forfeiture was incurred. The case was then argued as follows:—

FOR THE RESPONDENTS.

Mr. HARDINGE.—In this case it is only necessary to read and see in order to judge whether there is any thing in the Act, particularly in the exception which subjects the wine and ship to forfeiture.

The ship left Madeira, having taken on board twenty-five pipes of wine; it proceeded to St. Eustatius, where so much as certain consignees should require was to be landed, and the rest was to be carried on. Only ten casks were taken, the others were water-bound, and the ship never parted with them. There is no pretence to impute any fraud.

The alleged ground of seizure is, that this is not wine imported from Madeira, to Jamaica, so as to be safe under the excepting clause. The Sting is, that it did not go *directly*, but stopped at another place, and is therefore forfeitable. But Madeira wine is introduced under an exception,

No. IV. 15 Car. II. c. 7.

Prevention of Frauds.

VIII. And for the better prevention of frauds, Be it enacted, and it is hereby enacted, That from and after the five-and-twentieth day of *March* one thousand six hundred sixty and four every person or persons importing by land any goods or commodities whatsoever into any the said lands islands plantations colonies territories or places, shall deliver to the governor of such land island plantation colony territory or place or to such person or officer as shall be by him thereunto authorised and ap-

in which there is not a syllable to require that it shall be carried *directly* from Madeira to the British Colonies. If it had broke the continuity of the voyage, and had been landed in St. Eustatius, still it would have been within the exception, the meaning of which is only that it shall be taken from Madeira as the *terminus a quo*, and go to the other places as the *termini ad quos*. If that is not to be considered as the construction of so strict an Act of Parliament, intended to operate as a qualification, I contend that there is a direct importation from Madeira. The commodity remains on board from Madeira to Jamaica; and there is no pretence that there was any landing, or intention to land it at St. Eustatius—it was to be in the option of the consignees how much should be landed there—the remainder was to be taken as if originally destined for Jamaica, as much as if the ship had stopped at St. Eustatius for any other purpose. There seems no occasion within the meaning of the Act that the ship should not touch at any intermediate place. It should come originally from Madeira, and this is the fair interpretation.

Dr. LAWRENCE.—I shall slightly trace the history of these Acts. This is an Act which immediately followed the Navigation Act, and went upon the same grounds. The object was to secure to this country the carrying trade—that is laid down in the very remarkable preamble. It then lays down directions respecting the carriage of European goods—next follows the penalty of the goods and ship. As to what follows, it is provided to be lawful to lade *(inter alia)* at Madeira wine of the growth thereof *in such ships so navigated*.

It is only by the words, "*in such ships so navigated*," that the former part operates upon this. It would be more fair to refer it to what is required by the General Navigation Act, and adopted in the preceding clause. That is not only the interpretation which an unlearned man would put upon it, but is the exposition of the legislature, in the 22d and 23d Charles II. c. 26. made to supply some omissions, particularly an omission to repeal the word *Ireland* in one clause of the Navigation Act, and to require a bond to land in England. Sec. 10—The Act recurs to this preamble, recites it at length, and states, that it was therefore enacted that no goods or commodities of Europe should be carried into any the plantations but what should be laden and shipped in England, in English-built ships or ships made free, and navigated with English according to an Act of Parliament in that behalf. This Act, which is nearly cotemporary, is the best interpretation of the words *so navigated*. According to that interpretation, nothing requires a *direct* voyage from Madeira to Jamaica in the same manner as is required with respect to European goods. The object was to prevent frauds, by other nations becoming the factors and merchants for the plantations, by taking European goods there. It was not necessary for that purpose to extend the provisions further. In point of practice, goods have been carried in this manner without interruption.

There was a period in which the legislature was anxious to prevent frauds in the commerce with the West Indies. Sec. 30—The 4th Geo. III. c. 15. is the next Act containing any clause similar to the preceding. A fraud had been practised in the mean time by taking in lading at other European ports, and coming here for small parcel of goods, and then smuggling the goods from the rest of Europe. Therefore it is enacted, that no vessel shall be cleared outwards for any plantation, &c. unless the whole cargo shall be *bonâ fide* laden in this kingdom, with power for the officers of the customs to stop any British ships or vessels arriving from any part of Europe within two miles of any plantation, and to seize any goods for which the master shall not produce a cocket or clearance, certifying that the same were laden in Great Britain. Then comes an exception similar to that at present under consideration, and almost word for word the same, in which the word *directly* is not contained. This is an Act *in pari materia*. This is the first question of the kind that has been brought forward in the course of a hundred and thirty years. In the case of the Columbus a question arose something similar. Some Madeira had a permit to land at Tobago, but was not landed. It was contended, that because the master might have been compelled to land it, there was an actual importation and re-exportation. That case was stronger than the present, in which there was no permit to land. There were two other offences imputed in that case; but the Judge of the Admiralty Court held, that no forfeiture was incurred. The case being removed before the delegates was given up by the officers of the Crown under a protest, that there were points upon which they would not on future occasions hold themselves bound; but they did not state what those points were.

This is the first question which comes before the Court for regular decision; and the point is, whether the commodity falls within the penalty for not carrying directly, and then whether it was not carried directly. Nothing in the clause attaches such penalty. The object of the clause does not require any thing of the kind. *So navigated*, the only words at all bearing upon it by other Acts *in pari materia*, mean navigated according to the Navigation Act.

It would be difficult to shew how the European goods should not be confiscated and the Madeira wine should. Is there any thing which fairly

pointed within four-and-twenty hours after such importation his and their names and surnames, and a true inventory and particular of all such goods and commodities: and no ship or vessel coming to any such land island plantation colony territory or place shall lade or unlade any goods or commodities whatsoever until the master or commander of such ship or vessel shall first have made known to the governor of such land island plantation colony territory or place, or such other person or officer as shall be by him thereunto authorised and appointed, the arrival of the said ship or vessel with her name and the name and surname of her master or com-

Further provided for by 7 & 8 W. 3. c. 22. sec. 5.

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varies the one from the other? The Court are called upon to say that a contingent intention to land at St. Eustatius is a positive intention without any act to carry it into execution; and to prevent the annual contingent supply of countries at amity with Great Britain and impede the navigation of this country under an Act intended to promote it. There is nothing in this case to fix an importation and re-exportation; if there was it would be for the other side to shew it. On the contrary they admit the facts of the claim to be true.

Nothing was done at the custom-house. In foreign islands they may send in to inquire the state of the market and then send to the custom-house if they think proper. Here there was no act nor any thing more than a mere intention, which was to land what the consignees there required, which cannot be called a real importation any more than there was an importation of the dry goods, which is not pretended.

The consequences of a judgment of forfeiture would be to check a trade which has grown up since the time of the Act, which is highly advantageous to this country—employs much shipping. There is no public utility to promote or fraud to prevent by such a regulation; and the Court will rather assist than destroy the course of trade, if they can fairly and without violence to the Act.

As this question is brought on so long after the act, there is a fair ground to apply for costs. The vessel having been improperly detained, and dragged through all the Courts, the value of it is not so much as the costs incurred. If costs are not given, a number of small vessels will be seized on groundless pretences; and the owners will rather abandon their property than go to the expence of decision after decision with great anxiety and delay.

Dr. SWABEY.—The questions in this case are very few. The ship was incontestibly navigated by British subjects according to the Navigation Act. The captain duly reported the dry goods and delivered his cockets of them and a manifest of the wine. He clearly acted *bonâ fide*, and there is no ground to impute an intent to evade the law.

Neither the words of the Act nor any fair interpretation of it prohibit calling at intermediate ports with Madeira wine on board. The other side must resort to a forced implication.

The 6th section contains a prohibition in certain cases. The next section gives a particular permission. The word *directly* does not form a part of that either as applicable to salt, Madeira, or any other commodity mentioned in it. The object was to secure an importation in British ships, and nothing more. But if it were otherwise, nothing less than an actual landing would be a deviation from the Act.

The practice of the revenue is in our favour. There may have been opinions to the contrary, but those do not constitute the law. The only case upon the subject is that of the Columbus, one of the grounds in which is decisive. The decision in the Court of Admiralty upon that case was affirmed in the delegates by consent. The only difference between the cases is, that in that a permit was obtained to land the whole, whereas in the present it was never designed to land more than the consignees in St. Eustatius should think fit. It was there said that Tobago made a *medius terminus* and two voyages of what the legislature only intended that there should be one. But the point was over-ruled by the Court.

Courts of justice will be cautious against extending penal laws by implication. It is contended that they will not carry the law into execution, but they do not sit to repair defects.

The clause of forfeiture is expressly confined to the produce of Europe. Madeira wine is not such. If by construction the second clause related to the first there would be no forfeiture under the first, unless an African island is also to be taken as European by implication.

But if the word *directly* were in the last clause this would be direct. There was no landing at St. Eustatius; and if an intention to land is sufficient, there was no intention to land more than the consignees there should require. In the case of the Columbus there was an intention to take the chance of the market.

The case is not within the Act, or if it were by constructive implication, that only goes to prevent the landing and not to subject to forfeiture.

If government had thought the question proper to be tried, it is odd that in the case of the Columbus they should give it up, as, if that had been decided, much expence might have been prevented.

FOR THE APPELLANT.

Sir WILLIAM SCOTT, *King's Advocate.*—It is enacted, That no European goods shall be imported but under certain regulations; amongst others, to be *carried* directly *hence*, and from *no other place;* having not only affirmative but negative words. This is followed by a proviso that it should be lawful in such ships, so navigated, to ship salt, Madeira, and some other articles, and the same to *transport* and land.

It is submitted as a preliminary observation, that the word *transport* cannot be taken more largely

No. IV. 15 Car. II. c. 7.

mander, and have shewn to him that she is an *English*-built ship or made good by producing such certificate as abovesaid that she is a ship or vessel *bona fide* belonging to *England Wales* or the town of *Berwick* and navigated with an *English* master and three fourth parts of the mariners at least *Englishmen*, and have delivered to such governor or other person or officer a true and perfect inventory or invoice of her lading, together

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in the exception than the word *carry* in the preceding clause. Taken together they must mean the same thing, and do not allow a greater latitude in the one case than in the other. The object of the Act was that foreigners should not share in the entire navigation from the original place of lading to the West Indies. To permit Madeira to be fetched from other places would be as much within the mischief as European goods must be carried directly from England. We contend that it is not intended to permit carrying in a different manner in the second case from that which is required in the first. As the two parts are *in pari materia*, they must have the same construction.

[Mr. Justice Buller.—In the first it is expressly mentioned, but not in the other.]

Perhaps in the usual scale of geography, Madeira would not be placed in Europe. It is not attached to it, and may not be considered in that part of the globe. But for every purpose of revenue it has been uniformly considered as situated in Europe; and its productions have been classed as those of Europe. It would be absurd to construe it otherwise. To say you shall not carry from Europe, and then to except a place in Africa, would be *exceptio a non-descriptis*.

The question comes to this:—Has there been a direct voyage from Madeira within the Act of Parliament?

In the plain and obvious meaning of the word *direct*, a voyage is only direct when there is an undeviating course from the *terminus a quo* to the *terminus ad quem*, except where the deviation is produced by inevitable necessity.

If a ship bound for Lisbon were to go up the Baltic, that would not be called a direct voyage. This (it may be said) would be a considerable deviation—but if aberrations are allowed at all, what is there to limit or define them? What extent of deviation changes the character from directness to indirectness? The only latitude in these cases should be the same as upon a policy of insurance—to touch at certain places for the necessary purposes of the voyage. Touching at the Cape of Good Hope is no deviation in a voyage to the East Indies—but to go up the Mediterranean would be a deviation in a voyage to America. Going to any port without necessity is a deviation, except such ports as are usually stopped at in the course of the voyage, and as to them the underwriters must take notice of the course of trade. The other side is driven to contend that a voyage is direct, however circuitous, if there is no landing of the goods. According to such construction, Madeira wine, which had been taken to the East Indies, might be considered as coming directly from England.

As to the intention and purpose of the Act, the attention of the Court has been called to the preamble. Two objects are stated in it:—The keeping up a correspondence with the plantations, and having the entire navigation. Will it answer the first purpose, if you call at every intermediate port? Besides which, the great security that England should have the entire freight and navigation would be lost. If it is allowed to stop at any port, make as many regulations as you will, it will be impossible to discover where every particular parcel of goods was taken. Another object was, to supply the colonies with goods cheap, and a direct voyage will better promote that than one which is circuitous.

Much has been said about the practice of the custom-house—and it has been alleged that the custom-house at Lancaster permitted the dry goods to go the very voyage which is objected to. The claim states, that the vessel sailed from Lancaster duly cleared for Jamaica with dry goods on board, part of which *was to be landed* at Madeira, and part at St. Eustatius—but it does not appear that that intention was notified to the custom-house.

As to the practice of the revenue officers in the West Indies, I should be very sorry to appeal to them. The officers there lie at a great distance from the seat of government, where the pulse of authority beats weak. The officers live in small communities, where corruption is most likely to prevail. Government, on that account, lately thought it necessary to send fresh officers from England; the Augæan stable has been cleansed, and I protest against any inference from former practices.

I contend the Act does not require an actual importation, in order to subject to forfeiture. Going to St. Eustatius breaks the continuity—but there was an actual importation—and it would be a gross violation of language to say that the wine was imported into Jamaica directly from Madeira. The primary destination of it was to be sold at St. Eustatius. It was carried there with a design to sell. If that does not amount to an importation I do not know what does. The intention is said to have been conditional;—so it was as to the persons in St. Eustatius;—but the intention of the owners was absolute and complete. The wine was not intended to be carried further, if the consignees chose to accept it:—it was carried there for the express purpose of sale. When the practice is relied on, has it been carried up to that extent? That you may carry the goods to a port with intent to sell them. Lax as the practice has been, it will not be contended to have been so large as that.

[Mr. Justice HEATH.—That possibly may not be an importation according to the law of St. Eustatius.]

with the place or places in which the said goods were laden or taken into the said ship or vessel; under the pain of the loss of the ship or vessel, with all her guns ammunition tackle furniture and apparel, and of all such goods of the growth production or manufacture of *Europe*, as were not *bona fide* laden and taken in in *England Wales* or the town of *Berwick*, to be recovered and divided in manner aforesaid; and all such as

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If so, that ought to be shewn on the other side —if it is not shewn, the law in that respect must be taken to be as it is here.

The case of the Columbus involved a great variety of questions. The crown officers thought that there were many circumstances in it, which entitled the party to an equitable and indulgent consideration. They therefore gave up the case, reserving a right to oppose any legal point which was contained in its decision, if such should afterwards arise. A case which passed without argument, and with a denial of its operation as a precedent, cannot operate as such.

As to the ground of *bonâ fides*, the revenue law does not require a particular fraud in particular instances—but is applied to prevent those practices which, though they may be pursued for a good purpose, might be made a cover for fraud.

The number of officers in the West Indies is comparatively small—and the law ought to supply defects arising from local circumstances.

Mr. Attorney General, (Sir JOHN SCOTT.)—There are circumstances to be considered concerning the destination of the property and the intent of the shippers, as well with respect to the goods from Lancaster as those from Madeira. This is represented as the case of a vessel sailing from Lancaster with goods, some of which were to be landed at Madeira, others in St. Eustatius, and the remainder in the West Indies. The manner of stating the facts in the claim is, that it cleared for Jamaica with goods, part of which were intended to be landed at Madeira, and other part at St. Eustatius. That bears in some degree on the question concerning the goods taken. So far as I understand the Exchequer practice, there was nothing to prevent their being landed at Jamaica —but if they were carried to Madeira or St. Eustatius with intent to be landed there, and were not landed but carried to Jamaica, they would be seizable. If there is an importation between the *termini*, it becomes a distinct voyage, and the goods are considered as shipped at the intermediate ports, although they were never taken out of the ship. If a ship goes to a port in this country with intent to land, it is a complete importation.* Is the law the same with respect to going into foreign ports? It is considered as an importation in our islands. There was no such thing in any of them as a legal port till very lately. The ports here are set out by commission. But the court of Exchequer has always considered going into the usual harbour as a going into port, though no port may be legally set out. Such is the case at the present day with respect to Jersey and Guernsey.

It is said that no fraud can arise. The intention of the legislature was, that the British vessel should be the carrier from the extreme limits. The other side would contend that if it was to go round the world with the cargo, the policy of the Act requires rather that that should be encouraged than discouraged—for more shipping would be employed.

But direct carrying is required—because if a circuitous voyage were allowed, it would be difficult to determine whether goods were taken in at an intermediate place or not. It is not like those cases where goods are put in the custody of the law.

A direct carrying means as direct as in the nature of the thing it can be. You could not prevent touching at the usual ports; but they cannot carry indirectly, so as to have an opportunity to commit fraud.

The destination of the wine from Madeira is stated as follows:—*Consigned to order at St. Eustatius or elsewhere.* I never saw such a consignment. The claim should have gone on to aver that the person at St. Eustatius did give an order, if there was one. Did he address it to Jamaica, Lancaster, or what other place? If to Great Britain, the article could not be legally landed at Jamaica; if to Jamaica, it could not be brought to Great Britain. But if they mean to make out that it was ordered to be landed in Jamaica, that should be stated in the claim. If it was either actually or conditionally to be landed at Jamaica, it could not be carried to Great Britain, supposing the law to require a direct importation to Great Britain. If they are right in law that such conditional carrying is legal, there is nothing in their sense to shew that the original destination was followed up by any thing done at St. Eustatius. *St. Eustatius* or *elsewhere* is executory. What is there to fix it more to St. Eustatius than elsewhere. They might then go to any part of the world to receive orders. Suppose they had gone to Lancaster, they might say it was for orders—I do not contend that that is a necessary but it is a possible construction. There is nothing in this claim to shew that the master did at St. Eustatius receive orders to go to Jamaica or elsewhere. If no such order was given, the voyage was complete at the place where they were to receive orders.

As to the question, whether Madeira is in Europe or Africa, if the sixth section only prohibits goods of the growth of Europe, the seventh would be useless if the goods enumerated in it were not considered as goods of Europe. If Madeira is not to be taken as a part of Europe, why is there a proviso to lessen a prohibition in a case to which the prohibition cannot apply? So by the 4th Geo. III. ch. 15. no European goods are to be landed in the plantations, unless they are wholly and *bonâ fide* shipped here, with an exception of Madeira. It has been uniformly considered in the

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* Mr. Justice Heath asked if that had been held where the intent is only conditional.

No. IV. 15 Car. II. c. 7.

are governors or commanders of any the said lands islands plantations colonies territories or places (*Tangier* only excepted) shall before the five-and-twentieth day of *March* one thousand six hundred sixty and four, and all such as shall hereafter be made governors or commanders of any of them, shall before their entrance upon the execution of such trust or charge take a solemn oath before such person or persons as shall be

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legislative map of the world, that Madeira and the Azores are in Europe.

Then, as to the direct carrying, those who say that taking the wine to St. Eustatius is a direct carrying, must also contend that it is lawful to go round the world, and that the article kept on board may visit every port and be landed at last. If that is the intention, it is odd the Act should be not directly *imported*, but directly *carried*.

That the construction which I contend for is right may be collected from other Acts *in pari materid*. The stat. 31 Geo. III. ch. 34. recites, that it is expedient that the crapes of Italy should not be imported except directly, and prohibits any from being imported or brought (which is synonymous to carried) otherwise. Before that time they could be brought from any place. The legislature saw the mischief of that. If it is contended that any thing is imported directly from thence, after having gone all round the world; that is prevented by the term *brought*; and *brought* and *carried* have the same signification.

The same word is used guardedly in 27 Geo. III. c. 19. with respect to what may be imported from Gibraltar. Goods of the dominions of the Emperor of Morocco may be imported or brought into Great Britain which have been imported *directly* into Gibraltar from those dominions. Those who contend, that in the present case there is a direct carrying from Madeira to Jamaica, must contend, that the last-mentioned Act is satisfied if the goods are first brought to Great Britain, then to Gibraltar, and after being there ten years are brought to Great Britain again.

The same observation arises upon the commercial treaty with France carried into effect by Act of Parliament—27 Geo. III. ch. 13. It shall be lawful to import or bring directly from France any of the specified articles. If they went round the world to Great Britain, is that within the meaning of the legislature, speaking of bringing goods *directly* from France. It was the policy of this Act to prevent circuitous voyages, and the same words should not have a different construction upon the two Acts. I admit that this Act should have the same construction as the fourth section of the Navigation Act, where the words are *shipped or brought*. I understand the distinction which has obtained is, that if goods are taken to a place, but have not been unladen, they cannot be said to be shipped there, but they may be said to be brought, which word conveys a different idea.

If the property had not been landed in Jamaica, but brought to Great Britain, and seized because it was not brought directly, the respondents might say "I have a right to land it—my consignment is *to order at St. Eustatius or elsewhere*—how do you know that the order was to land in Great Britain?"—The *onus* lies on them to shew the destination for Jamaica—they have shewn no such thing in their claim—there is nothing in that which would not enable them to say—"I did not bring it from Jamaica, but from Madeira, calling at St. Eustatius and Jamaica. No order appears to land at Jamaica. It must be taken to be landed at the ultimate destination of the vessel, which was Great Britain.

Dr. NICHOLLS.—The facts are perfectly agreed, and the question is, whether the wine was imported, under the permission of the second clause. As to the question respecting the site of Madeira, that has been completely done away by the Attorney-General. For the purposes of revenue, Madeira is considered to be in Europe. If so, this importation is prohibited by the 6th section—is it allowed by the 7th?—for being a proviso the party must shew himself to be clearly within the permission of that proviso. Two questions have been made—first, whether a direct importation is required—second, whether this is a direct importation. As to the first: the seventh section expressly requires the wine to be laden at Madeira, and *transported* into the British plantations. Can the word *transported* authorise them to send to St. Eustatius, giving power to a person there, either to take the commodity or send it on? So, the words of the 7th section imply, that the navigation must be direct. By referring to the former clause, to lade and transport, in the proviso, means the same as to carry directly in the preceding section. The proviso is not an exception as to the manner of carrying, but only as to the place from which the article may be carried. The policy of the Act equally requires a direct carriage from Madeira to Jamaica.

As to the second point, I apprehend there is not a direct importation, unless the article be destined originally for a British colony, without an intent to land at an intermediate place. Then here is a *medius terminus* which renders the carriage indirect. It cannot be said there was no importation at St. Eustatius; all the wine was consigned there so far as related to the act of the lader, and the subsequent act of the consignor, at St. Eustatius, makes an importation and re-exportation. The case of the Columbus was mentioned by all the advocates on the other side. It does not apply, or if it did, the protest would prevent its operating as a precedent. But the difference is, that the wine there was not destined either for a French port, or a British port, in the West Indies, but for London. The ship was driven by stress of weather, into Madeira, where some wine was bought. It went to dispose of some herrings at Tobago. Having an opportunity of getting some lumber there, in exchange for that, left some wine which was not destined there. The chief ground of seizure was the lumber, and not the Madeira, which was consigned for London.

The whole here was imported into St. Eusta-

authorised by his Majesty his heirs and successors to administer the same; to do their utmost within their respective governments or commands, to cause to be well and truly observed what is in this Act enacted in relation to the trade of such lands islands plantations colonies territories and places, under the penalty of being removed out of their respective governments and commands: and if any of them shall be found

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tius; bringing in for the purpose of sale, is an importation. It was brought there, not in *transitu*, but to a market, and must have fresh clearances. Those at Madeira, could not shew the destination to Jamaica. There are certain cockets dispensed with as to Madeira, because there is no British custom-house there, but the original documents must shew the destination. It is said, if these goods were liable to forfeiture, those shipped at Lancaster were so too. But they were originally destined for Jamaica, and were only at St. Eustatius *in transitu*.

As to what is said about usage, I do not admit but deny the fact. The practice may have been overlooked, but there is no usage or custom to authorise it. The other side argued on the policy of the Act; but the policy is not merely the employment of British shipping. There is another object, which is to supply the plantations as cheaply as possible and maintain a greater correspondence with them. The more cheaply they are supplied, the more the general objects of the Act will be effectuated. But if the ships are permitted to hawk the goods at intermediate ports, they must be worse supplied and pay higher freights. Instead of rendering the supply more cheap, it would destroy the policy of the Act.

IN REPLY.

Mr. HARDINGE.—The simplicity of the point made by the respondents, is equal to the force and clearness of it. As to the mode of claim and want of strict averment, a claim of this kind is not required to be so strict as a plea, and it is a violent and not an obvious interpretation, which is put upon it by the Attorney-General. For the goods in question had originally a conditional destination. This is a penal Act in restraint of commerce, therefore, in the prohibiting part it is to be construed in as limited, and in the exception from the penalty, in as extensive a sense as the words will permit.

The questions, as has been often stated, are, whether the carriage of Madeira must be as direct as is necessary for the dry goods from Lancaster, and whether, if that be the law, the actual carriage was indirect.

The first point is in a word. The 6th section is applied to European goods strictly considered, they are to be carried in a certain specific manner, they are to be laden in England, in English-built shipping, the master and three-fourth of the marines are to be English, and the carriage is to be direct. Such is the first clause. What is the second? It provides that Madeira wine may be shipped at Madeira, and may be carried to our Foreign plantations in ships described by the preceding clause, or in other words, as they might have been before this Act of Parliament. I could concede that the want of the word *directly* in the second clause is a mere slip, be it so, the slip is fatal.

Sir WILLIAM SCOTT said, that as the two parts were in *pari materie* they must have the same construction, but being in *pari materie* cannot extend a penal Act. If that was enough, why was not it sufficient to say, Madeira wines may be shipped at Madeira. Then, the preceding clause might in other respects attach; but it says, *in such ships so navigated*, that shews that in the minds of the legislature there was a necessity it should be expressed. They would equally see the necessity of requiring directness if such was the intention.—"*Transport*" was said by Dr. NICHOLL to be equivalent to "*carry direct*," but I deny the exposition.

If there had been nothing in the first clause but that the carriage should be direct, and then the proviso had interposed, or if there had been two separate Acts, will any man say, that because they were in *pari materie*, the second omitting the words of the first would be deemed to have the construction of the first. The clause extends not only to Madeira but also to salt, and as to being in *pari materie*, that privilege is extended by Stat. 13 Geo. 1. ch. 5. to salt sent to Pennsylvania. It contains a legislative direction that salt may be carried and imported [*not directly* but] in the manner prescribed by 12 Chas. 2. There is a similar provision by 3 G. 2. ch. 12. with respect to New York. Is it contended that the carriage may be circuitous to Pennsylvania and New York, but must be direct to other places?

But whatever the clause may import as to the first point, if we come within the second the goods are perfectly safe, that is, directly carried according to the meaning of the Act, which is not re-exported. Will it be said, that this wine, which was not made over to the consignee at St. Eustatius, was exported from thence. The Act of Parliament says, no—the *lading* was not there.

As to the ground of constructive and virtual importation, I agree that fraud in the intention to import is not necessary to constitute an importation, but there must be an *animus importandi*, which must be manifested by some overt act *at the port*. Suppose there were a manifest intention at Madeira to import the whole at St. Eustatius, and in the intermediate passage that intention was completely abandoned—it would be the same as if there never was any such intention at all—but here there never was such purpose, and though it is argued that it was the intention of the laders to land the whole, that is not true. The intention was to land not the whole, but what the consignees might want. This was not wanted—therefore it was not intended to be imported—and it makes no difference whether it was or was not dependant on the option of the consignees.

No. IV. 15 Car. II. c. 7.

after the taking of such oath to have wittingly and willingly offended contrary to what is by this Act required of them, that they shall for such offence be turned out of their governments, and be incapable of the government of any other land island plantation or colony; and moreover forfeit the sum of one thousand pounds of lawful money of *England*; the one moiety to his Majesty his heirs and successors; and the other

When we are told of the policy of the Act, it is safer to cut the knot than loose it. Be the argument ever so sound, that the goods would not be sold so cheaply, it is enough to say, that the Act might intend by a general restraint to prevent taking goods except in a particular manner, and yet not intend to prevent it in this respect even for effectuating the same general purpose.

Dr. LAWRENCE.—In the Court below, the case was argued merely upon this point:—That the importation must be absolutely direct—and that there must be no greater deviation than is allowed upon policies of insurance. The Attorney General has not pursued that principle. The case was intended to be argued on legal grounds, and not upon any dispute of facts as it has been here.

Observations have been made on the policy of the Act, as it appears in the preamble—that it was intended the navigation should be made cheaper, which would require a direct voyage. It is by no means a necessary consequence, that the colonies would be supplied cheaper by a direct voyage: a circuitous voyage might have that effect in many instances.

A preliminary point has arisen as to the geography of Madeira. It is argued, that it should be considered as an European and not as an African island, although it geographically belongs to Africa.

No inference can be drawn from this Act—because it is the immediate subject in dispute—and the clause in the 4th Geo. III. is calculated to avoid this confusion. There is not a word in it about *European goods*. It only speaks of *ships coming from Europe*. The wording of the Act does not give, but rather avoids the construction in question. With regard to the quarters of the world, the legislature, in the Navigation Act, describes them in a sweeping manner, by referring to the usual designation in cards and maps.*

As to construing Madeira to be for the purposes of this Act in Europe—because otherwise the 7th Section would be an *exceptio a non descriptis*—we all know very well how exceptive clauses get into Acts of Parliament. Particular facts may be suggested, and amendments are frequently made; but a mere inference from an exception will not overturn the ideas arising from the general part.

It is contended, on the other side, that there must not be such a deviation as would destroy a policy of insurance. In cases of insurance the smallest deviation is fatal. In a case lately decided in the House of Lords, a vessel which had liberty to touch at Leith touched a few miles below—and it was held, to vitiate the policy, so cruising by a letter of marque destroys the insurance. The principle of these cases is, that the deviation varies the risk. What would be the consequences to British commerce, if the same strictness was necessary under all the Acts which require a direct importation? By the book of rates, all drugs imported directly from the place of their growth in English-built shipping, are to be rated at only one-third of what is charged in the book. Drugs are brought from a variety of places—but, according to the doctrine contended for, the ship cannot stop any where. By 22 Geo. III. c. 78. Hungarian drugs are to be imported directly. Must ships, having these aboard, never stop any where? There are many other Acts upon which a similar absurdity would arise.

The Attorney General says the legislature did not intend to say goods might go all over the globe. Certainly no such thing was in the contemplation of the legislature. If their construction must prevail in this case, it must in all—and the consequence will be, that you can only carry one kind of goods. There was a case which arose in 1681, respecting some worm seed, which was brought from Leghorn in an English-built ship, and was alleged to have been brought to Leghorn in another English-built ship—and Mr. Ward, then Attorney General, was consulted whether this was a direct importation, which entitled to an easement of duty under the book of rates; and he was of opinion that it was not, there being a *medius terminus*. But in that case there were two distinct voyages on distinct interests. The King's Advocate alluded to the opinion in the Court below, but it has been since published—(Reeves' Law of Shipping, 171)—and therefore he did not adduce it again. There are other opinions by Mr. Saunders and Sir Edward Northey (Reeves, 173. 175.) In other cases of direct importation, no such direct voyage without deviation is required.

The words of the clause are not only positive but also negative—that the goods shall be carried directly from England, and from no other place or places whatsoever. The negative words are clear interpretations of the others; they shew that *direct* means no more than *only*, and that a direct importation is something different from a direct voyage.

This exposition is confirmed by Acts which have taken place concerning the 13th Section of the Navigation Act, which directs that none of the enumerated commodities shall be shipped, carried, conveyed, or transported from the plantations, except to some of our other plantations or to this country, there to be laid on shore. This is referred to by various Acts of Parliament using the word *direct*. In particular the 4th of Geo. III. ch. 15, sec. 27. adding to the enumerated articles,

* No Goods of Africa, Asia, or America, or of any part thereof, or which are described or laid down in the usual cards or maps of those places shall be imported, &c.

moiety to him or them that shall inform or sue for the same in any of his Majesty's courts in any of the said plantations or in any court of record in *England*, wherein no essoign protection or wager of law shall be allowed.

IX. And it is hereby further enacted, That if any officer of the customs in *England Wales* or town of *Berwick-upon-Tweed*, shall give any warrant for or suffer any sugar tobacco ginger cotton-wool indigo speckle-wood or *Jamaica*-wood fustick or other dyeing-wood of the growth of any of the said lands islands colonies plantations territories or places to be carried into any other country or place whatsoever, until they have been first

Penalty upon Officers of the Customs.

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uses this expression, coffee, &c. of any British colony or plantation in America are to *be imported directly* from thence into this kingdom. This is an interpretation of the legislature, the object of which was only to add to the enumerated articles, and shews what is considered as a direct importation. It is the act of landing that constitutes the indirectness, or if there is any thing equivalent to landing it is that. The interpretation of the legislature, as well as the fair interpretation of the words is, that there shall not be a landing or any thing equivalent. I must complain of the niceties which have been used. It was intended to lay down a general rule of law, and make this a leading case. Any observations on words are inconsistent with that intention.

It is said there were circumstances which were applicable to the wine and not to the dry goods, so that the one was forfeitable and the other not, because the dry goods were never intended to be landed at St. Eustatius. The original intention respecting the wine was such as the master afterwards carried into execution. It is, I apprehend, sufficient if the consignee says not here, but there. It is not said *totidem verbis*, that he did direct the wine to be carried to Jamaica, but it is not to be taken, that because that is not formally expressed, the contrary must be inferred. The argument upon the subject rather applies to procure a condemnation of this ship than to produce a general rule.

As ports are mentioned in many Acts of Parliament respecting the West Indies, the word must be taken *quasi* port, but it should appear that the goods were there for importation. In the clause, introducing the principle of the Hovering Act into the 4th Geo. III. the vessel is permitted to stay off four-and-twenty hours. It is the usual course of trade to send into port, within that time, to know the state of the market, and then to act accordingly. Under a similar practice, the master might send to Eustatius, and make inquiry, and afterwards come in. If it does not appear that he actually did go in at first, and indulgencies of that kind are usually allowed, the Court will not entertain a presumption against him, to make a particular case for the condemnation of this vessel.

That *direct importation* was intended to be contrasted with *no other place* is agreeable to divers other Acts, and appears to be the sense of the legislature, by Acts which would cramp and destroy trade, if the word *direct* was construed to require such a voyage without deviation, as is necessary upon policies of insurance.

In all the instances where questions have been raised, the goods were actually taken out of the ship. There is no proof of any absolute and complete intention, between Madeira and Jamaica, to land more than was actually landed at St. Eustatius. If the Court presume any thing, it will be in favour of the master, who made no concealment, and if it is necessary to enter upon that point, they will presume that he did not go into St. Eustatius, until his intention what to land was fixed. There have been cases in which the officers of the Crown have held the importation to be direct, though the goods were actually taken out of the ship.

This is a favourable case, in which there has been no fraudulent intention.

No notice or direction was given to the merchants not to follow this course of trade. The costs which have been incurred considerably exceed the value of the property.

The Court affirmed the Sentence of the High Court of Admiralty, (by which it was held that no Forfeiture had been incurred,) without Costs—but gave no public Opinion on the different Points which had been discussed.

It is to be observed, that three questions of considerable importance arose in this cause.

1st. Whether Madeira is, for the purposes of revenue and navigation, to be considered as situate in Europe or in Africa.

2nd. Whether the goods mentioned in the 7th section of 15 Charles II. are, by force of the words *in such ships so navigated*, required to be carried as directly as the goods mentioned in the preceding section.

3rd. Whether goods carried to a port, with a conditional intention to be landed, but never taken out of the ship, are *directly carried* to an ulterior port within the meaning of 15 Chas. II. ch. 7. sec. 6.

Upon any one of these points being decided in favour of the respondents, the sentence must necessarily have been affirmed; but since the Court of Delegates (as I believe is usual) did not give any public opinion—it does not appear how many of the points were settled by their determination. This case can therefore only be considered as a direct precedent in others exactly similar.

In order to shew in what manner the questions were agitated, the arguments of counsel are stated very much at length, which, although it may produce the charge of prolixity and repetition, may possibly be of use in elucidating several points referred to as arguments, and may facilitate future discussion upon any of the contested questions.

No. IV. 15 Car. II. c. 7.

unladen *bona fide* and put on shore in some port or haven in *England* or *Wales* or in the town of *Berwick*; that every such officer for such offence shall forfeit his place and the value of such of the said goods as he shall give warrant for or suffer to pass into any other country or place; the one moiety to his Majesty his heirs and successors, and the other moiety to him or them that shall inform or sue for the same in any court of record in *England* or *Wales*, wherein no essoign protection or wager in law shall be allowed.

XII. 'And forasmuch as several considerable and advantageous trades 'cannot be conveniently driven and carried on without the species of 'money or bullion, and that it is found by experience that they are car- 'ried in greatest abundance (as to a common market) to such places as 'give free liberty for exporting the same; and the better to keep in and 'increase the current coins of this kingdom,' Be it enacted and it is hereby enacted, That from and after the first day of *August* one thousand six hundred and sixty-three it shall and may be lawful to and for any person or persons whatsoever to export out of any port of *England* or *Wales* in which there is a customer or collector or out of the town of *Berwick* all sorts of foreign coin or bullion of gold or silver, first making entry thereof in such custom-house respectively without paying any duty custom poundage or fee for the same; any law statute or usage to the contrary notwithstanding.

In order to pave the way to the decision of the third point, the minor and very insignificant question upon the particular language of the claim must have been determined in favour of the respondents.

As the case of the Columbus was so frequently referred to, it may not be amiss to insert the following statement of the circumstances of that case, from Sir James Marriott's judgment, as it is reported in the *Collectanea Juridica*, vol. 1. p. 82. Premising that the seizure was made principally on the ground of Stat. 27 Geo. 3. cap. 39. whereby lumber, imported from any of the ports of the American States, is prohibited, if brought indirectly from any foreign plantations.

"The ship Columbus duly cleared and sailed out from London, in ballast, November 14, 1786, for Gottenburgh, in Sweden. There the master took in a cargo of dried herrings. The mariner's contract expresses that the intended voyage was to be from London to Gottenburgh, and from thence to Tobago, and elsewhere. She accordingly sailed from Gottenburgh, the 14th of Jan. 1787, for Tobago; meeting with a hard gale of wind, and being in want of water, she put into Madeira, on the 7th of March, to water and repair. The master took in Madeira wines, in barter for some of the herrings, and having repaired his ship, and taken in water and other necessaries, sailed for Tobago, where he arrived the 2d of April, and there, by permission of the French governor, the captain disposed of the remainder of his herrings, and *part of his Madeira wines, for landing of which he obtained a permit*, from the French custom-house at Tobago, *except ten pipes, two hogsheads, and three quarter casks*. While the ship was lying at Tobago, he purchased on behalf of, and shipped on account of his owners, a quantity of lumber, the growth of the dominions of the United States of America.

They were shipped to be imported into the island of Barbadoes, with an intent for the ship to take in a lading of sugars for London upon freight. The master at this time had received no information of the passing the Act of the 27th of George the Third, forbidding such importation indirectly from the ports of the United States of America. The master, having completed his landing at Tobago, purchased from a French vessel lying there twenty-three or twenty-five dozen of claret in bottles as stores for the ship's use, stowed them with other liquors in his lockers in his cabin, and on the 24th sailed for Barbadoes. This claret was purchased partly by Madeira wine in exchange, and partly by a small bill of exchange.

On the 7th of June, 1787, upon the moment of the ship's arrival, before she could come to anchor, she was seized by Mr. Samuel Dearsley, then acting as collector of the customs for the port of Bridge Town. An information was filed in the Vice-Admiralty Court at Barbadoes by Dearsley, charging this coming-in as an importation into the island of Barbadoes, contrary to the several Acts of the Revenue, particularly the 12th and 15th Chas. II. and the 4th and 24th of George the Third, and his royal proclamation of the 8th of April, 1787—that part of the cargo was put on board at Tobago, an island in the West Indies, belonging to the French King; that it was the growth, and produce, and manufacture of the United States of America, the property of the subjects of the said state, or of some foreign state; *that the wine, being the growth and produce of Europe, was not shipped in England but Tobago*; that, on his arrival, the master did not make a full report of his lading, and that ten cases of wine and other goods were found on board after the master had made his report.

The learned Judge minutely examined all these charges, and held, that there was no ground of seizure upon any of them.

[No. V.] 16 Charles II. c. 6.—An Act to prevent the delivering up of Merchant Ships.——*English* Ships not to be yielded up to Turks or Pirates. The Penalty on Masters of Ships, Process out of the Court of Admiralty, Mariners or inferior Officers declining to fight. The Penalty. Encouragement to Captains and Seamen to defend their Ships. Ships which shall be taken by the *English*. The Penalty of wilfully destroying Ships. The Continuance of this Act for Three Years, &c.

No. V. 16 Car. II. c. 6.

[No. VI.] 22 & 23 Charles II. c. 11.—An Act to prevent the Delivery up of Merchants Ships, and for the Increase of good and serviceable Shipping.

'WHEREAS it often happeneth that masters and commanders of merchants ships do suffer their ships to be boarded and their goods to be taken out by pirates and sea-rovers, notwithstanding they have sufficient force to defend themselves, whereby not only the merchants are much prejudiced but the honour of the *English* navigation is thereby much diminished and merchants discouraged from lading their goods on board *English* ships to the decay of shipping; in the preservation of which the wealth honour and safety of this nation is so much concerned: to which the said masters are encouraged by a practice used towards them by the *Turks* and others who after they have taken out the goods, as an encouragement to masters of ships to yield, do not only restore the ship with such goods as are claimed by the masters or seamen, but many times pay unto the masters all or some part of the freight, which hath many times caused suspicion of treachery in the said masters to the great dishonour of the *English* nation:' 22 & 23 Car. II. c. 11. 16 Car. 2. c. 6.

II. For the prevention thereof for the future and for the better encouragement of merchants as well foreigners as *English* to freight and use *English* ships; Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons assembled in Parliament, and by the authority of the same, That where any goods or merchandizes shall be laden on board any *English* ship, which ship shall be of the burthen of two hundred tons or upwards and mounted with sixteen guns or more, if the master or commander shall yield up the said goods to any *Turkish* ships or vessels or to any pirates or sea-rovers whatsoever without fighting; that then and in such case the master shall upon proof thereof made in the High Court of Admiralty be from thenceforth incapable of taking charge of any *English* ship or vessel as master or commander thereof; and if he shall at any time thereafter presume to take upon him to command any *English* ship or vessel he shall suffer imprisonment by warrant from the said court during the space of six months for every such offence: and in case the persons so taking the said goods shall release give back or let pass the said ship, shall pay unto the said master any sum or sums of money or any goods in lieu of money for freight or other reward or gift; that in all or any such cases the said goods or money so given or the value thereof, as also the master's part of such ship her tackle apparel and furniture so released given back or let pass, out of which the said goods were taken, shall be liable to repair the persons whose goods were so delivered or taken, by action in the High Court of Admiralty: and in case the commander's or master's part of the ship tackle apparel and furniture together with such money and goods given as aforesaid shall not be sufficient to repair all the damages sustained, then the reparations to be recovered on the master's or commander's part of the ship to be divided *pro rata* amongst the persons prosecuting and proving their damages,

No Master shall deliver up any Ship (of 200 Tons and sixteen Guns) to any Pirates or others, without fighting.

No. VI. 22 & 23 Car. II. c. 11.

and the persons damaged to have their action against the master for the remainder.

III. And be it further enacted by the authority aforesaid, That no master of any such *English* ship as aforesaid being at sea and having discovered any ship to be a *Turkish* ship pirate or sea-rover shall depart out of his ship upon any pretence whatsoever, lest by his detention on board any such ship the safety of his own ship be hazarded.

The Master not to depart out of his Ship.

IV. And be it further enacted, That if the master of any *English* ship or vessel though not of the burthen of two hundred tons or mounted with sixteen guns as aforesaid shall yield his ship unto any *Turkish* ship pirate or sea-rover (not having at the least his double number of guns) without fighting, every such master shall be liable to all and every the penalties in this Act contained.

The Penalty when the Ship is under 200 Tons and sixteen Guns.

To seize by Process out of the Admiralty.

V. And be it further enacted by the authority aforesaid, That upon process made out of the High Court of Admiralty it shall and may be lawful to and for all commanders of his Majesty's ships of war or the commanders of any other *English* ships to seize such ships or masters so offending, according to the said process in such case to be issued, and the same to bring or send in custody into any ports of his Majesty's dominions, there to be proceeded against according to the intent and meaning of this Act.

VI. Provided, That none be hereby encouraged to violate the rights of the ports of any foreign Prince or states in amity with the King's Majesty.

Penalty for Mariners refusing to fight.

VII. And be it further enacted by the authority aforesaid, That if the mariners or inferior officers of any *English* ship laden with goods and merchandizes as aforesaid shall decline or refuse to fight and defend the ship when they shall be thereunto commanded by the master or commander thereof or shall utter any words to discourage the other mariners from defending the ship; that every mariner who shall be found guilty of declining or refusing as aforesaid shall lose all his wages due him together with such goods as he hath in his ship and suffer imprisonment not exceeding the space of six months, and shall during such time be kept to hard labour for his or their maintenance.

Where the Master is forced to yield his Ship, there he is excused.

VIII. Provided always, That if any ship shall have been yielded as aforesaid contrary to the will and endeavour of the master or commander by the disobedience of the mariners testified by their having laid violent hands on him; that in such case the master or commander shall not be liable to the sentence of incapacity as aforesaid nor to any action for the losses sustained by the merchants, unless he shall have received back from the takers thereof his ship or some recompence gift or reward as aforesaid.

Penalty for Mariners to force him to yield his Ship, Felony.

IX. And be it further enacted by the authority aforesaid, That every mariner who shall have laid violent hands on his commander whereby to hinder him from fighting in defence of his ship and goods committed to his trust shall suffer death as a felon.

When any Officers or Seamen are wounded in defence of their Ship, Provision is made for their Maintenance.

Seamen maimed in fighting against Pirates provided for by 8 Geo. 1. c. 24. sec. 5.

X. And for the better encouragement to captains masters officers and seamen to defend their ship; Be it enacted by the authority aforesaid, That when any *English* ship shall have been defended by fight and brought to her designed port, in which fight any of the officers or seamen shall have been wounded, it shall and may be lawful to and for the judge of his Majesty's High Court of Admiralty or his surrogate or the judge of the Vice-Admiralty within which the ship shall arrive at her return, upon petition of the master or seamen of such ship so defended as aforesaid, to call unto him such and so many as he shall be informed to be adventurers or owners of the ship and goods so defended, and by advice with them to raise and levy upon the respective owners and adventurers by process out of the said court such sum or sums of money as himself with the major part of the adventurers or owners then present shall judge reasonable, not exceeding the value of two *per cent.* of the ship and goods so defended according to the first cost of the goods, to be made appear by the invoice (which the owner or his factor or correspondent is hereby required to produce) or by the oath of the said owner factor or corres-

pondent if thereunto required; which money so raised shall be paid unto the registrar of the said court who shall receive for the same three pence in each pound and no more, thence to be distributed amongst the captain master officers, and seamen of the said ship or widows and children of the slain, according to the direction of the judge of the said court with the approbation of three or more of the owners or adventurers aforesaid, who shall proportion the same according to their best judgments unto the ship's company as aforesaid, having special regard unto the widows and children of such as shall have been slain in that service and to such as shall have been wounded or maimed.

The Benefit they are to receive by taking a Ship that shall assault them.

XI. And in case the company belonging unto any *English* merchant ship shall happen to take any ship, which ship shall first have assaulted them, the respective officers and mariners belonging to the same shall after condemnation of such ship and goods have and receive to their own proper use and benefit such part and share thereof as is usually practised in private men of war.

Felony for any Officer or other Person wilfully to destroy any Ship.

XII. 'And whereas it often happeneth that masters and mariners of 'ships having insured or taken upon bottomry greater sums of money 'than the value of their adventure, do wilfully cast away burn or other-'wise destroy the ships under their charge to the merchants and owners 'great loss;' For the prevention thereof for the future, Be it enacted by the authority aforesaid, That if any captain master mariner or other officer belonging to any ship shall wilfully cast away burn or otherwise destroy the ship unto which he belongeth or procure the same to be done he shall suffer death as a felon.

Encouragement given for building good Ships.

XIII. And for the better encouragement of building good and defensible ships, Be it enacted, That all and every person or persons that shall within the space of seven years from and after the first of *May* next ensuing build or cause to be built within any of his Majesty's dominions any ship or vessel of three decks with a forecastle and five feet between each deck mounted with thirty pieces of ordnance at least and other ammunition proportionable, shall for the first two voyages which the said ship or ships make from his Majesty's dominions to any foreign part have and receive to his and their own proper use and benefit one tenth part:

XIV. And all persons that shall build any ships of two decks above three hundred tons and thirty guns shall have one twentieth part of the customs that shall be paid to his Majesty for all such goods or merchandizes as shall be exported or imported on the said ship or ships to and from this kingdom: and the commissioners and officers of his Majesty's customs are hereby empowered and required to pay the same to the owner or owners of the said ship or ships accordingly.

[No. VII.] 7 & 8 William III. c. 22.—An Act for preventing Frauds, and regulating Abuses in the Plantation Trade.

English-built Ships to be registered and Proof made on Oath before the Collector of the Custom, &c.

XVII. AND for a more effectual prevention of frauds which may be used to elude the intention of this Act by colouring foreign ships under *English* names; Be it further enacted by the authority aforesaid, That from and after the five-and-twentieth day of *March*, which shall be in the year of our Lord one thousand six hundred ninety-eight, no ship or vessel whatsoever shall be deemed or pass as a ship of the built of *England Ireland Wales Berwick Guernsey Jersey* or any of his Majesty's plantations in *America*, so as to be qualified to trade to from or in any of the said plantations until the person or persons claiming property in such ship or vessel shall register the same as followeth; that is to say, If the ship at the time of such register doth belong to any port in *England Ireland Wales* or the town of *Berwick upon Tweed*, then proof shall be made upon oath of one or more of the owners of such ship or vessel before the collector and comptroller of his Majesty's customs in such port; or if at the

No. VII. 7 & 8 Will. III. c. 22.

time of such register the ship belong to any of his Majesty's plantations in *America* or to the islands of *Guernsey* or *Jersey*, then the like proof to be made before the governor together with the principal officer of his Majesty's revenue residing on such plantation or island, which oath the said governors and officers of the customs respectively are hereby authorised to administer in the tenor following, *viz.*

The Oath.

'*JURAT*' *A. B.* That the ship [name] of [port] whereof [master's name] is at present master, being a [kind of built] of [burthen] tons, was built at [place where] in the year [time when] and that [owners name] of and of, &c. are at present owners thereof; and that no foreigner directly or indirectly hath any share or part or interest therein.'

Oath to be attested by the Governor, and a Duplicate to be transmitted, &c.

XVIII. Which oath being attested by the governor or custom officer respectively who administered the same under their hands and seals shall after having been registered by them be delivered to the master of the ship for the security of her navigation, a duplicate of which register shall be immediately transmitted to the Commissioners of his Majesty's Customs in the Port of *London*, in order to be entered in a general register to be there kept for this purpose, with penalty upon any ship or vessel trading to from or in any of his Majesty's plantations in *America* after the said five-and-twentieth day of *March*, and not having made proof of her built and property as is here directed, that she shall be liable and she is hereby made liable to such prosecution and forfeiture as any foreign ship (except prizes condemned in the High Court of Admiralty) would for trading with these plantations by this law be liable to.

Prize Ships to be registered, &c.

XIX. Provided always, That all such ships as have been or shall be taken at sea by letters of mart or reprisal and condemnation thereof made in the High Court of Admiralty of *England* as lawful prize shall be specially registered, mentioning the capture and condemnation instead of the time and place of building, with proof also upon oath that the entire property is *English* before any such prize shall be allowed the privilege of an *English*-built ship according to the meaning of this Act.

Fisher Boats, Hoys, &c. not to be registered.

XX. Provided also, That nothing in this Act shall be construed to require the registring any fisher-boats hoys lighters barges or any open boats or other vessels (though of *English* or plantation built) whose navigation is confined to the rivers or coasts of the same plantation or place where they trade respectively, but only of such of them as cross the seas to or from any of the lands islands places or territories in this Act before recited or from one plantation to another.

Ship's Name not to be altered without registering de novo, &c.

XXI. And be it further enacted by the authority aforesaid, That no ship's name registred shall be afterwards changed without registring such ship *de novo*, which is hereby required to be done upon any transfer of property to another port and delivering up the former certificate to be cancelled under the same penalties and in the like method as is hereinbefore directed; and that in case there be any alteration of property in the same port by the sale of one or more shares in any ship after registring thereof, such sale shall always be acknowledged by indorsement on the certificate of the register before two witnesses, in order to prove that the entire property in such ship remains to some of the subjects of *England* if any dispute arises concerning the same.*

* A transfer is not void for non-compliance with this direction, Hodgson *v.* Brown, 2 B. & A. 427.

[No. VIII.] 12 Anne, st. 2. c. 18.—An Act for the preserving all such Ships and Goods thereof, which shall happen to be forced on shore, or stranded, upon the

Coasts of this Kingdom, or any other of her Majesty's Dominions.

No. VIII.

12 Anne, st. 2. c. 18.

'WHEREAS by an Act made in the third year of the reign of King *Edward* the First concerning wrecks at sea, it is enacted, That 'where a man a dog or a cat escape quick out of the ship that such ship 'nor barge nor any thing in them shall be adjudged a wreck, but the 'goods shall be saved and kept by view of the sheriff coroner or the 'King's bailiff and delivered into the hands of such as are of the town 'where the goods were found; so that if any sue for those goods and 'after prove that they were his or perished within his keeping within a 'year and a day, they shall be restored to him without delay, and if not 'they shall remain to the King or to such others to whom wreck be-'longeth; and he that otherwise doth and thereof be attainted shall be 'awarded to prison and make fine at the King's will: And whereas by 'another Act made in the fourth year of the reign of the said King '*Edward* the First, intituled *De officio Coronatoris*, concerning the wreck 'of the sea, it is enacted, That wheresoever it be found if any lay hands 'of it he shall be attached by sufficient pledges and the price of the wreck 'shall be valued and delivered to the town: And whereas great com-'plaints have been made by several merchants, as well her Majesty's sub-'jects as foreigners trading to and from this kingdom, that many ships of 'trade after all their dangers at sea escaped have unfortunately near 'home run on shore or been stranded on the coast thereof; and that 'such ships have been barbarously plundered by her Majesty's subjects 'and their cargoes embezzled, and when any part thereof has been saved 'it has been swallowed up by exorbitant demands for salvage to the great 'loss of her Majesty's revenue and to the much greater damage of her 'Majesty's trading subjects:' For remedy whereof be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That the sheriffs justices of the peace of every county or county of a city or town and also all mayors bailiffs and other head officers of corporations and port-towns near adjoining to the sea and all constables headboroughs tythingmen and officers of the customs in all and every such places, shall be, upon application made to them or any of them by or on the behalf of any commander or chief officer of any ship or vessel of any of her Majesty's subjects or others being in danger of being stranded or run on shore or being stranded or run on shore, and they are hereby empowered and required to command the constables of the several ports within her Majesty's dominions nearest to the sea coasts where any such ship or vessel shall be in danger as aforesaid to summon and call together as many men as shall be thought necessary to the assistance and for the preservation of such ship or vessel so in distress as aforesaid and their cargoes; and that if there shall be any ship or vessel, either man of war or merchant ship, belonging to her Majesty or any of her subjects riding at anchor near the place where such ship or vessel is in distress or danger as aforesaid, the officers of the customs and constables above-mentioned or any of them are hereby empowered and required to demand of the superior officers of such ship or vessel so riding at anchor as aforesaid assistance by their boats and such hands as they can conveniently spare for the said service and preservation of the said ship or vessel so in distress as aforesaid; and that in case such superior officer of such ship or vessel riding at anchor as aforesaid shall refuse or neglect to give such assistance, he shall forfeit for the same the sum of one hundred pounds, to be recovered by the superior officer of the said ship or vessel so in distress as aforesaid together with their costs of suit in any of her Majesty's courts of record by action of debt bill plaint or information, wherein no essoign wager of law or protection shall be allowed.

12 Anne, st. 2. c. 18.

3 Ed. 1. c. 5.

4 Ed. 1. st. 2.

Sheriffs, Mayors, &c. and Custom-house Officers to summon Men to assist Ships in Distress.

All Ships to assist,

on Forfeiture of 100*l.*

II. And for the encouragement of such persons as shall give their assistance to such ships or vessels so in distress as aforesaid, Be it further

Reasonable Salvage to be made.

By 5 Geo. 1. c. 11. § 13. Goods saved from stranded ships are to pay Custom;

No. VIII. 12 Anne, st. 2. c. 18.

enacted, That the said collectors of the customs and the master or commanding officer of any ships or vessels and all others who shall act or be employed in the preserving of any such ship or vessel in distress as aforesaid or their cargoes shall within thirty days after the service performed be paid a reasonable reward for the same by the commander master or other superior officer mariners or owners of the ship or vessel so in distress as aforesaid, or by the merchant whose ship vessel or goods shall be so saved as aforesaid; and in default thereof the said ship vessel or goods so saved as aforesaid shall remain in the custody of such officer of the customs or his deputy until such time that all charges shall be paid and until the said officer of the customs or his deputy and the said master or other officer of the ship or vessel and all others so employed as aforesaid shall be reasonably gratified for their said assistance and trouble, or good security given for that purpose to the satisfaction of the several parties that are to receive the same; and that in case after such salvage the commander or other superior officer mariners or owners of such ship or vessel so saved as aforesaid or merchant whose goods shall be so saved as aforesaid shall disagree with the said officer of the customs or his deputy touching the monies deserved by any of the persons so employed as aforesaid, it shall be lawful for the commander of such ship or vessel so saved, or the owner of the goods or the merchant interested therein, and also for the said officer of the customs or his deputy to nominate three of the neighbouring justices of the peace, who shall thereupon adjust the *quantum* of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of the said ship vessel or goods; (1.) and such adjustments shall be binding to all parties and shall be recoverable in an action at law to be brought in any of her Majesty's courts of record by the respective persons to whom the same shall be allotted by the said justices of peace; and in case it shall happen that no person shall appear to make his claim to all or any the goods that shall be saved, that then and in such case the chief officer of the customs of the nearest port to the place where the said ship or vessel was so in distress as aforesaid shall apply to three of the nearest justices of the peace, who shall put him or some other responsible person in possession of the said goods, such justices of peace taking an account in writing of the said goods to be signed by such officer of the customs; and if the said goods shall not be legally claimed within the space of twelve months next ensuing by the rightful owner thereof, then publick sale shall be made thereof, and if perishable goods forthwith to be sold, and after all charges deducted the residue of the monies arising by such sale with a fair and just account of the whole shall be transmitted to her Majesty's Exchequer, there to remain for the benefit of the rightful owner when appearing, who upon affidavit or other proof made of his or their right or property thereto, to the satisfaction of one of the Barons of the coife of the Exchequer, shall upon his order receive the same out of the Exchequer.

Three Justices to adjust the Quantum.

Goods not claimed in Twelve Months to be sold, and the Monies transmitted into the Exchequer, &c.

Persons entering Ship without Leave,

or hindering the saving the Ship to make double Satisfaction.

III. And it is hereby also enacted, That if any person or persons whatsoever besides those empowered by the said officer of the customs or his deputy and the constables as aforesaid shall enter or endeavour to enter on board any such ship or vessel so in distress as aforesaid without the leave or consent of the commander or other superior officer of the said ship or of the said officer of the customs or his deputy or of the said constable or some or one of them employed for the service and preservation of the said ship or vessel as aforesaid; or in case any person shall molest him them or any of them in the saving of the said ship vessel or goods, or shall endeavour to impede or hinder the saving of any such ship vessel or goods, or when any such goods are saved shall take out or deface the marks of any such goods before the same shall be taken down in a book or books for that purpose provided by the commander or ruling

(1.) A Person to whom the Commander sent for assistance, and who directed, under the Inspection of the Officers of the Customs, the landing of the Goods, &c. is thereby constituted an Agent of the Owners, and taken out of the Provisions of this Act—Baring *v.* Dory, 8 E. 57. See post, 48 Geo. 3. c. 130—49 Geo. 3. c. 122—53 Geo. 3. c. 87.

officer and the first officer of the customs as aforesaid, such person or persons shall within the space of twenty days make double satisfaction to the party grieved, at the discretion of the two next justices of peace, or in default thereof shall by such justices of peace be sent to the next house of correction where he shall continue and be employed in hard labour by the space of twelve months then next ensuing; and that it shall be lawful for any commander or superior officer of the said ship or vessel so in distress as aforesaid, or for the said officer of the customs or constables on board the same ship or vessel to repel by force any such person or persons as shall without such leave or consent from the said commander or superior officer or the said officer of the customs or his deputy or such constables as aforesaid press on board the said ship or vessel so in distress as aforesaid, and thereby molest them in the preservation of the said ship or vessel so in distress as aforesaid.

Masters may repel Pressers into the Ship.

IV. And it is hereby likewise enacted, That in case any goods shall be found upon any person or persons that were stolen or carried off from any such ship or vessel so in distress as aforesaid, he she or they on whom such goods shall be found shall immediately upon demand deliver the same to the owner thereof or to such person by such owner authorised to receive the same, or in default thereof shall be liable to pay treble the value of such goods to be recovered by such owner in an action at law to be brought for the same.

Goods carried off, to be immediately delivered up.

Penalty Treble the Value.

V. And it is hereby moreover enacted, That if any person or persons shall make or be assisting in the making any hole in the bottom side or any other part of any ship or vessel so in distress as aforesaid, or shall steal any pump belonging to any ship or vessel so in distress as aforesaid, or shall be aiding or abetting in the stealing such pump as aforesaid, or shall wilfully do any thing tending to the immediate loss or destruction of such ship or vessel, such person or persons shall be and are hereby made guilty of felony without any benefit of his her or their clergy.

Making Holes in the Ship, &c. Felony.

VI. And be it further enacted by the authority aforesaid, That if any action suit or information shall be commenced or prosecuted against any person or persons for any thing that he or they shall do or cause to be done in pursuance of this Act, and executing any of the powers and authorities or any of the orders or directions therein mentioned, all and every person and persons so sued in any court whatsoever shall and may plead the general issue and give this Act and the special matter in evidence; and if in any such suit the plaintiff or prosecutor shall become nonsuit or forbear prosecution or discontinue the suit, or if a verdict shall pass against him or judgment be given against him upon a demurrer, then in any of the said cases the defendant or defendants shall recover full costs for which he and they shall have the like remedy as where costs by law are awarded; and this Act shall be taken and allowed in all courts within this kingdom as a publick Act, and all judges and justices are hereby required to take notice thereof as such without special pleading of the same.

General Issue.

Publick Act.

VII. Provided nevertheless if any officer of the customs or his deputy so empowered as above shall by fraud or wilful neglect abuse the trust so hereby reposed in him as aforesaid, and shall be convicted thereof in due form of law, such officer or his deputy shall respectively forfeit treble damages to the party grieved, to be recovered in any action or suit to be brought in any court of record, and shall from thenceforth be fully disabled and rendered incapable of the same or any other employment relating to the said customs.

Custom-house Officer abusing his Trust, to forfeit Treble Damages, and be disabled.

VIII. And it is hereby further enacted, That this Act and the several clauses herein contained shall take effect from and after the first day of *August* in the year of our Lord one thousand seven hundred and fourteen; and that for the better observing of the same this Act shall be read four times in the year in all the parish churches and chapels of every sea-port town and upon the sea-coast in this kingdom upon the *Sundays* next before *Michaelmas-day Christmas-day Lady-day* and *Midsummer-day* in the morning immediately after the prayers and before the sermon.

Act to commence 1 Aug. 1714, and to be read four Times in the Year on Sundays in Sea-port Towns.

IX. Provided always and it is hereby enacted, That neither this Act

Claims to Wreck saved.

No. VIII. 12 Anne, st. 2. c. 18.

nor any thing herein contained shall any ways extend to deprive or any ways prejudice her royal Majesty her heirs or successors or any claiming under them or any of them or any patentee or grantee of the Crown or any lord or lords of any manor or manors or other person whatsoever of or in relation to any right which they or any of them respectively have or shall have or lawfully may claim to any wreck or wrecks, or any goods that are or shall be flotsam jetsam or lagan, but that such respective rights shall be enjoyed in as full ample and beneficial a manner in every respect as if this Act had never been made.

Continuation.

X. Provided, That this Act shall continue in force for the space of three years, and from thence to the end of the next session of parliament and no longer.

Made perpetual by 4 Geo. 1. c. 12.

[No. IX.] 4 George I. c. 12.—An Act for enforcing and making perpetual an Act of the Twelfth Year of her late Majesty, intituled, *An Act for the preserving of all such Ships and Goods thereof, which shall happen to be forced on Shore, or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions;* and for inflicting the Punishment of Death on such as shall wilfully burn or destroy Ships.

4 Geo. I. c. 12. 12 Ann. Stat. 2. c. 18. 3 Ed. 1. c. 4. 4 Ed. 1. Stat. 2.

'WHEREAS the Act made in the twelfth year of the reign of her late 'Majesty Queen *Anne*, intituled *An Act for the preserving of all 'such Ships and Goods thereof which shall happen to be forced on Shore or 'stranded upon the Coasts of this Kingdom or any other of her Majesty's Do-'minions* will expire at the end of this present session of Parliament unless 'the same be continued: And whereas the said Act hath been found by 'experience to be of great use and benefit to the seafaring men and mer-'chants of this kingdom and other his Majesty's dominions:' Be it therefore enacted by the King's most excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That the said recited Act, intituled *An Act for the preserving of all such Ships and Goods thereof which shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom or any other of her Majesty's Dominions*, and all the clauses matters and things therein contained shall be and is hereby declared to be made perpetual.

Not to extend to the Admiralty Court of the Cinque Ports.

II. Provided always, and it is hereby further enacted, That the said Act or any thing therein contained shall not be construed to extend to or any ways affect the ancient jurisdiction and usage of the Admiralty-court of the Cinque Ports or the officers thereto belonging; but the proper officers of the said Admiralty-court shall be and are hereby authorised and empowered to put the said Act in execution within the jurisdiction of the said Cinque Ports in as full and ample manner to all intents and purposes as any other person or persons are by the said Act appointed to do in any other parts of this kingdom.

Any Owner, &c. wilfully destroying any Ship to prejudice the Insurers, shall suffer Death.

III. And for the effectual preventing the wilful casting away burning or otherwise destroying of ships by the owners masters and mariners thereof and thereto belonging; Be it enacted by the authority aforesaid, That if any owner of or captain master mariner or other officer belonging to any ship shall, after the twenty-fourth day of *June* which shall be in the year of our Lord one thousand seven hundred and eighteen, wilfully cast away burn or otherwise destroy the ship of which he is the owner or unto which he belongeth, or in any manner of wise direct or procure the same to be done to the prejudice of any person or persons that shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, he shall suffer death.

By 11 Geo. 1. c. 29. sec. 5. this Clause is explained, and the Offenders ousted of Clergy.

[No. X.] 2 Geo. II. c. 36.—An Act for the better Regulation and Government of Seamen in the Merchants Service.

No. X. 2 Geo. II. c. 36.

'WHEREAS the welfare and riches of this kingdom greatly depend on the trade and navigation thereof, the same being of great use and benefit and tending very much to enrich the subjects thereof, upon which great numbers of the artificers and manufacturers livelihoods wholly depend: And whereas for several years last past the navigation carried on by the merchants to parts beyond the seas hath been and doth still remain under very great difficulties and expences by the uncertainty they labour under by seamen and mariners who ship themselves on board merchant ships and after they have so done neglect their duty and will not remain on board their ships or vessels to discharge their duty; and very often when ships and vessels come to be cleared out in order to proceed on their respective voyages the seamen refuse to proceed with them without coming to new agreements for increasing their wages, and many of them will leave their ships and vessels and not proceed on their voyages which put the owners of such ships and vessels to great trouble and charges to get other sailors or mariners in their stead and often is a means to overset the voyages of such ships and vessels to the great prejudice of the owners and freighters of the goods on board the said ships and vessels; and yet such seamen and mariners after they have committed such offences and disorders will bring actions against the owners or masters of the said ships and vessels for the recovery of their wages from the time of their shipping themselves unto the time they quit the said ships and vessels: And whereas many of the said seamen and mariners will neglect their duty when on board at sea and desert their ships and vessels in foreign parts, which puts the said owners of ships and vessels to very great difficulties and expences to get others in their stead to bring their ships and vessels home; and afterwards such seamen and mariners insist on recovering their wages notwithstanding their voluntary desertion, all which is a great discouragement to trade and navigation:' Therefore in order to prevent such practices for the future, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* one thousand seven hundred and twenty-nine it shall not be lawful for any master or commander of any ship or vessel bound to parts beyond the seas to carry any seaman or mariner, except his apprentice or apprentices, to sea from any port or place where he or they were entered or shipped to proceed on any voyage to parts beyond the seas without first coming to an agreement or contract with such seamen or mariners for their wages, which agreement or agreements shall be made in writing declaring what wages each seaman or mariner is to have respectively during the whole voyage or for so long a time as he or they shall ship themselves for; and also to express in the said agreement or contract the voyage for which such seaman or mariner was shipped to perform the same; and in case any master or commander of any ship or vessel shall carry out any seaman or mariner, except his apprentice or apprentices, upon any voyage to parts beyond the seas without first entering into such agreement or contract as aforesaid and he and they signing the same, such master or commander shall forfeit and pay the sum of five pounds for every such seaman or mariner which he shall carry to sea without entering into such agreement in writing as aforesaid, to the use of *Greenwich* Hospital, to be recovered upon information on the oath of one or more witness or witnesses before any one or more of his Majesty's justice or justices of the peace who are hereby authorised and required to issue out his or their warrant or warrants to bring before him or them such master or commander of any such ship or vessel; and in case he

2 Geo. II. c. 36.

Made perpetual by 2 Geo. 3. c. 31.

No Masters of Ships to proceed on a Voyage without agreeing with the Mariners for Wages.

Apprentices excepted.

on Forfeiture of 5*l.* for each Mariner.

No. X. 2 Geo. II. c. 36.

or they refuse to pay such penalty or forfeiture as aforesaid, to grant his or their warrant or warrants to levy the same by distress and sale of the offender's goods; and in case no distress can be found, to commit the offender or offenders to the common gaol of the city county town or place there to remain until he or they shall pay the same.

Mariners to sign the Agreement.

II. And be it further enacted, That if any seaman or mariner enter or ship himself on board any merchant ship or vessel on any intended voyage for parts beyond the seas, he and they so entering themselves as aforesaid shall and they are hereby obliged to sign such agreement or contract within three days after he or they shall have entered themselves on board any ship or vessel in order to proceed on any voyage as aforesaid; which agreement or agreements or contracts after the signing thereof shall be conclusive and binding to all parties for and during the time or times so agreed or contracted for to all intents and purposes; any custom or usage to the contrary in anywise notwithstanding.

Penalty on Mariners deserting.

III. And be it enacted and declared by the authority aforesaid, That in case any seaman or mariner shall desert or refuse to proceed on the voyage on board any ship or vessel bound to parts beyond the seas as aforesaid, or that shall desert from the ship or vessel to which he or they shall belong in parts beyond the seas after he or they shall have signed such contract or agreement, he or they shall forfeit to the owners of such ship or vessel the wages which shall be due to him or them at the time of his or their deserting from such ship or vessel or obstinately refusing to proceed on such voyage.

Justices of the Peace may commit Deserters to the House of Correction.

IV. And be it further enacted, That in case any such seaman or mariner shall desert or absent himself from any such ship or vessel after he or they have entered into and signed such contract or agreement to proceed upon any voyage to parts beyond the seas as aforesaid, upon application made to any of his Majesty's justices of the peace within their respective jurisdictions by the master or commander owner or owners or other person or persons having charge of the said ship or vessel to which such seaman or mariner did belong, it shall and may be lawful for such justice or justices and they are hereby required to issue forth his or their warrant or warrants to apprehend such seaman or mariner; and in case he or they shall refuse to proceed on the voyage for which he or they entered into contract or agreement to perform as aforesaid and shall not give a sufficient reason for such refusal to the satisfaction of such justice or justices, then to commit such seaman or mariner to the house of correction, there to be kept to hard labour not exceeding thirty days nor less than fourteen days, any thing to the contrary notwithstanding.

Penalty on Mariners absenting from the Ship without Leave.

V. And be it enacted by the authority aforesaid, That in case any seaman or mariner shall absent himself from the ship or vessel to which he shall belong, without leave from the master or commander or other chief officer having the charge of such ship or vessel, every such seaman or mariner shall for every such day's absence forfeit two days' pay to the use of *Greenwich* Hospital, to be recovered applied and disposed of as is herein-after directed by this Act.

Penalty for leaving the Ship before discharged.

VI. 'And whereas seamen and mariners after their ships arrival at 'their unlivering port in *Great Britain* ofttimes leave the ships and ves-'sels before they are unladen or before the said seamen and mariners 'are discharged by the masters or commanders of such ships and ves-'sels;' In order to prevent such practices for the future, Be it further enacted by the authority aforesaid, That in case any seaman or mariner not entering into the service of his Majesty his heirs and successors shall leave such ship or vessel to which he or they belong, before he or they shall have a discharge in writing from the master or commander or other person having the charge of such ship or vessel, he or they so leaving such ship or vessel shall forfeit one month's pay, to be recovered applied and disposed of as is herein after directed.

Masters to pay Mariners' Wages in 30 Days after coming home.

VII. And be it further enacted by the authority aforesaid, That upon the arrival of any ship or vessel into *Great Britain* from parts beyond the

seas the masters or commanders of such ships or vessels shall be and they are hereby obliged to pay the seamen and mariners belonging to such ships or vessels their wages if demanded in thirty days after the said ships or vessels being entered at the custom-house, except in case where a covenant shall be entered into to the contrary, or at the time the said seamen and mariners shall be discharged, which shall first happen, deducting out of such wages the penalties and forfeitures by this Act imposed under the penalty of paying to each seaman or mariner that shall be unpaid contrary to the true intent and meaning of this Act twenty shillings over and above the wages that shall be due to each person to be recovered by the same means and methods as the wages may be recovered; and such payment of wages aforesaid shall be good and valid in law, notwithstanding any action bill of sale attachment or incumbrance whatsoever.

In case of Suit for Wages, Master obliged to produce the Agreement.

VIII. And be it further enacted, That no seaman or mariner by entering into or signing such contract or agreement as aforesaid shall be deprived of or hindered from using any means or methods for the recovery of wages against any ship the master or owners thereof which he may now lawfully make use of, and that in all cases where it shall or may be necessary that the contract or agreement in writing aforesaid should be produced in court no obligation shall lie on any seaman or mariner to produce the same, but on the master owner or owners of the ship for which the wages shall be demanded; and no seaman or mariner shall fail in any suit action or process for recovery of wages for want of such agreement or contract being produced; any law usage or custom to the contrary notwithstanding.

And Seamen not deprived of other Remedies.

Masters to deduct out of Seamen's Wages all Penalties due to Greenwich Hospital.

IX. And be it further enacted, That the masters or commanders or owners of any ships or vessels shall and they hereby have full power to deduct out of the wages of any seaman or mariner all the penalties and forfeitures to be incurred by this Act and to enter them in a book or books to be kept for that purpose and to make oath if required to the truth thereof; which book or books shall be signed by the said master or commander of each ship or vessel respectively and two or more principal officers belonging to such ships or vessels, setting forth that the penalties and forfeitures contained in such book or books are the whole penalties and forfeitures stopt from any seamen or mariners during the whole voyage; which penalties and forfeitures (except the forfeiture of wages to the owners on the desertion of any seaman or mariner or on refusing to proceed on the voyage) shall go and be applied to the use of *Greenwich* Hospital and not otherwise, to be paid and accounted for by the masters and commanders of ships and vessels coming from parts beyond the seas to the same officer or officers at any port or place who collects the six pence *per* month deducted out of seamen's wages for the use of the said hospital; which officer shall have and hereby hath full power to administer an oath to every commander or master respectively touching the truth of such penalties and forfeitures to be paid applied and disposed of as aforesaid.

Forfeitures to be paid to the Hospital within Three Months.

X. And be it further enacted, That in case any masters or commanders or owners of any ships or vessels shall deduct out of the wages of any seamen or mariners any of the penalties and forfeitures which by this Act are directed to be deducted and applied to and for the use of *Greenwich* Hospital, and shall not pay the money so deducted to some officer or officers who collect the six pence *per* month deducted out of seamen's wages for the use of the said hospital, in the port or place where such deduction shall be made, within three months after such deduction; every person so neglecting to pay the money so deducted as aforesaid shall forfeit and pay treble the value thereof to the use of the said hospital; which together with the money deducted as aforesaid shall and may be recovered by the same means and methods as any penalties and forfeitures for not duly paying the said six pence *per* month can or may be recovered.

Publick Act.

XI. And be it further enacted, That this Act shall be deemed and

No. X. 2 Geo. II. c. 36.

taken to be a publick Act; and all judges and justices are hereby obliged to take notice of it as such without special pleading the same.

XII. Provided always and it is hereby enacted, That this Act shall continue and be in force for the space of five years to be reckoned from the said twenty-fourth day of *June* one thousand seven hundred and twenty-nine and from thence to the end of the then next session of Parliament and no longer.

Continuation of Act

Continued by 23 Geo. 2. c. 31. and made perpetual by 2 Geo. 3. c. 5. which extends it to America.

Act not to debar Seamen from entering into his Majesty's Service.

XIII. Provided, That nothing in this Act contained shall extend or be construed to extend to debar any seaman or mariner belonging to any merchant ship or vessel from entering or being entered into the service of his Majesty his heirs and successors on board any of his or their ships or vessels; nor shall such seaman or mariner for such entry forfeit the wages due to him during the term of his service in such merchant ship or vessel; nor shall such entry be deemed a desertion.

[No. XI.] 7 George II. c. 15.—An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners.

7 Geo. II. c. 15.

'WHEREAS it is of the greatest consequence and importance to this kingdom to promote the increase of the number of ships and vessels and to prevent any discouragement to merchants and others from being interested and concerned therein: And whereas it has been held that in many cases owners of ships or vessels are answerable for goods and merchandize shipped or put on board the same, although the said goods and merchandize after the same have been so put on board should be made away with by the master or mariners of the said ships or vessels without the knowledge or privity of the owner or owners, by means whereof merchants and others are greatly discouraged from adventuring their fortunes as owners of ships and vessels, which will necessarily tend to the prejudice of the trade and navigation of this kingdom:' Therefore for ascertaining and settling how far owners of ships and vessels shall be answerable for any gold silver diamonds jewels precious stones or other goods or merchandize, which shall be made away with by the masters or mariners without the privity of the owners thereof; Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That no person or persons who is are or shall be owner or owners of any ship or vessel shall be subject or liable to answer for or make good to any one or more person or persons any loss or damage by reason of any embezzlement secreting or making away with (by the master or mariners or any of them) of any gold silver diamonds jewels precious stones or other goods or merchandize, which from and after the twenty-fourth day of *June* which shall be in the year of our Lord one thousand seven hundred and thirty-four shall be shipped taken in or put on board any ship or vessel, or for any act matter or thing damage or forfeiture done occasioned or incurred from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-four by the said master or mariners or any of them without the privity and knowledge of such owner or owners further than the value of the ship or vessel, with all her appurtenances and the full amount of the freight due or to grow due for and during the voyage wherein such embezzlement secreting or making away with as aforesaid or other malversation of the master or mariners shall be made committed or done; any law usage or custom to the contrary thereof in any wise notwithstanding.

Owners of Ships liable only to forfeit Value of Ship and Freight, for Embezzlements committed without their Knowledge.

II. And it is hereby further enacted by the authority aforesaid, That if several freighters or proprietors of any such gold silver diamonds

If several Proprietors suffer by Embezzlement, and Value of Ship, &c. be not sufficient to compensate the Loss, their Proportions to be determined by Average; and the Freighters or Owners may exhibit a Bill for discovering Amount of such Losses, &c.

jewels precious stones or other goods or merchandize, shall suffer any loss or damage by any of the means aforesaid in the same voyage, and the value of the ship or vessel with all her appurtenances, and the amount of the freight due or to grow due during such voyage, shall not be sufficient to make full compensation to all and every of them, then such freighters or proprietors shall receive their satisfaction thereout in average in proportion to their respective losses or damages: and in every such case it shall and may be lawful to and for such freighters or proprietors or any of them on behalf of himself and all other such freighters or proprietors, or to and for the owners of such ship or vessel or any of them on behalf of himself and all the other part-owners of such ship or vessel, to exhibit a bill in any court of equity for a discovery of the total amount of such losses or damages, and also of the value of such ship or vessel appurtenances and freight, and for an equal distribution and payment thereof amongst such freighters or proprietors in proportion to their respective losses or damages, according to the rules of equity.

Part-owners exhibiting such Bill, to annex an Affidavit, that they do not collude with Defendants.

III. Provided always, That if any such bill shall be exhibited by or on the behalf of the part-owners of such ship, the plaintiff or plaintiffs shall annex an affidavit to such bill or bills, that he or they do not collude with any of the defendants thereto, and shall thereby offer to pay the value of such ship or vessel appurtenances and freight as such court shall direct; and such court shall thereupon take such method for ascertaining such value as to them shall seem just, and shall direct the payment thereof in like manner as is now used and practised in cases of bills of interpleader.

And not to lessen any Remedy which Person aggrieved hath for Embezzlements.

IV. Provided always and it is hereby declared and enacted, That nothing in this present Act contained shall extend or be construed to extend to impeach lessen or discharge any remedy which any person or persons now hath or shall or may hereafter have against all every or any the master and mariners of such ship or vessel for or in respect of any embezzlement secreting or making away with any gold silver diamonds jewels precious stones or merchandize shipped or loaded on board such ship or vessel, or on account of any fraud abuse or malversation of and in such master and mariners respectively; but that it shall and may be lawful to and for every person or persons so injured or damaged to pursue and take such remedy for the same against the said master and mariners respectively, as he or they might have done before the making of this Act.

[No. XII.] 20 George II. c. 38.—An Act for the Relief and Support of maimed and disabled Seamen, and the Widows and Children of such as shall be killed, slain or drowned in the Merchants Service.

[No. XIII.] 26 George II. c. 19.—An Act for enforcing the Laws against Persons who shall steal or detain shipwrecked Goods; and for the Relief of Persons suffering Losses thereby.

26 Geo. II. c. 19.

'WHEREAS notwithstanding the good and salutary laws now in being against plundering and destroying vessels in distress and against taking away shipwrecked lost or stranded goods many wicked enormities have been committed to the disgrace of the nation and to the grievous damage of merchants and mariners of our own and other countries:' For remedy thereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That if any person or persons shall plunder steal take away or destroy any goods or merchandize or other effects from or belonging

Persons convicted of plundering shipwrecked Goods, &c. to suffer Death.

No. XIII. 26 Geo. II. c. 19.

to any ship or vessel of his Majesty's subjects or others, which shall be in distress or which shall be wrecked lost stranded or cast on shore in any part of his Majesty's dominions (whether any living creature be on board such vessel or not) or any of the furniture tackle apparel provision or part of such ship or vessel; or shall beat or wound with intent to kill or destroy or shall otherwise wilfully obstruct the escape of any person endeavouring to save his or her life from such ship or vessel or the wreck thereof; or if any person or persons shall put out any false light or lights with intention to bring any ship or vessel into danger; then such person or persons so offending shall be deemed guilty of felony, and being lawfully convicted thereof, shall suffer death as in cases of felony without benefit of clergy.

Where Goods of small Value be stolen, Petit Larceny.

II. Provided always and be it enacted by the authority aforesaid, That when goods or effects of small value shall be stranded lost or cast on shore, and shall be stolen without circumstances of cruelty outrage or violence; then and in such cases it shall be lawful for any person or persons to prosecute for such offence by way of indictment for petit larceny; and the offenders being thereof lawfully convicted, shall suffer such punishment as the laws in cases of petit larceny do enjoin or require.

Justices upon Information of ship-wrecked Goods being stolen, &c. to issue Search Warrants.

III. And be it further enacted by the authority aforesaid, That it shall be lawful for any one or more of his Majesty's justices of the peace, upon information made before him or them upon oath (which oath all justices are hereby empowered to administer) of any part of the cargo or effects whatsoever belonging to any ship or vessel lost or stranded upon or near the coasts aforesaid, being unlawfully carried or conveyed away or concealed in any house out-house barn or other place, or of some reasonable cause of suspicion thereof, to issue his or their warrant or warrants for the searching of such house out-house barn or other place as in other cases of stolen goods: and if the same shall be found in such house out-house barn or other place or places, or upon or in the custody or possession of any person or persons not legally authorised or entitled to keep and withhold the same; and the owner or occupier of such house out-house barn or other place or the person or persons upon whom or in whose custody or possession the same shall be found shall not immediately upon demand deliver the same to the lawful owner or owners thereof, or to such other person or persons as shall be lawfully authorised to demand the same; or shall not give a good account to the satisfaction of the said justice or justices how he she or they came by or became possessed thereof; it shall and may be lawful to and for such justice or justices upon proof of such refusal and he and they is and are hereby required to commit the said offender or offenders to the common gaol for the space of six months or until he she or they shall have paid to such lawful owner or owners, or to the person or persons lawfully authorised to receive the same, treble the value of the goods or things so by him her or them unlawfully detained.

Goods offered to Sale, suspected to be shipwrecked, to be stopt, &c.

IV. And be it further enacted by the authority aforesaid, That if any person or persons shall offer or expose to sale any goods or effects whatsoever belonging to any ship or vessel lost stranded or cast on shore as aforesaid, and unlawfully taken away or reasonably suspected so to have been; then and in every such case it shall be lawful for the person or persons to whom the same shall be so offered for sale, or any officer of the customs or excise or any constable headborough or tythingman or other peace officer to stop take and seize the said goods and effects; and that he or they shall with all convenient speed carry the same or give notice of such seizure to some one or more of his Majesty's justice or justices of the peace; and if the person or persons who shall have offered the said goods or effects to sale, or some other person or persons on his her or their behalf, shall not appear before the said justice within ten days next after such seizure, and make out to the satisfaction of the said justice the property of the said goods or effects to be in him her or them, or in the person or persons by whom he she or they was or were employed to sell the same; then the said goods or effects shall by order of the said justice be forthwith delivered over to or for the use of the right-

ful owner or owners thereof, upon payment of a reasonable reward for such seizure (to be ascertained by the said justice) to the person who seized the same; and such justice shall and may commit the person or persons who so have offered or exposed the said goods or things to sale as aforesaid to the common gaol for the space of six months, or until he she or they shall have paid to such lawful owner or owners or to the person or persons lawfully authorised to receive the same treble the value of the said goods or effects so by him her or them unlawfully offered to sale as aforesaid.

Persons who shall save, and carry any Vessel, &c. and give Notice thereof; or who shall discover, &c.

V. And be it further enacted by the authority aforesaid, That in case any person or persons not employed by the master mariners or owners or other persons lawfully authorised in the salvage of any ship or vessel or the cargo or provision thereof shall in the absence of persons so employed or authorised save any such ship vessel goods or effects, and cause the same to be carried for the benefit of the owners or proprietors into port, or to any near adjoining custom-house or other place of safe custody, immediately giving notice thereof to some justice of the peace magistrate or custom-house or excise officer, or shall discover to any such magistrate or officer where any such goods or effects are wrongfully bought sold or concealed; then such person or persons shall be entitled to a reasonable reward for such services, to be paid by the masters or owners of such vessels or goods, to be adjusted in case of disagreement about the *quantum* in like manner as the salvage is to be adjusted and paid by virtue of the statute made in the twelfth year of the reign of her late Majesty Queen *Anne*, intituled *An Act for the preserving all such Ships and Goods thereof which have happened to be forced on Shore or stranded upon the Coasts of this Kingdom or any other of her Majesty's Dominions*, or else in the manner hereinafter prescribed, as the case shall require.

12 Anne, st. 2. c. 18.

Where any Vessel, &c. be stranded, public Notice to be given for a Meeting of the Sheriff, &c. who are to aid in saving the Vessel, &c. and to adjust the Salvage.

VI. And be it further enacted by the authority aforesaid, That for the better ascertaining the salvage to be paid in pursuance of this present Act and the Act before-mentioned, and for the more effectual putting the same Acts in execution, the justice of the peace mayor bailiff collector of the customs or chief constable, who shall be nearest to the place where any ship goods or effects shall be stranded or cast away, shall forthwith give publick notice for a meeting to be held as soon as possible of the sheriff or his deputy the justices of the peace mayors or other chief magistrates of towns corporate coroners and commissioners of the land-tax or any five or more of them, who are hereby required and empowered to give aid in the execution of this and the said former Act, and to employ proper persons for the saving of ships in distress and such ships vessels and effects as shall be stranded or cast away; and also to examine persons upon oath touching or concerning the same or the salvage thereof, and to adjust the *quantum* of such salvage and distribute the same among the persons concerned in such salvage in case of disagreement among the parties or the said persons; and that every such sheriff justice of the peace mayor chief magistrate coroner lord of a manor under-sheriff or commissioner of the land-tax attending and acting at such meeting, shall be paid four shillings a day for his expences in such attendance out of the goods and effects saved by their care or direction.

If the Salvage be not paid, the Officer of the Customs may raise the same, &c.

VII. Provided always and be it further enacted by the authority aforesaid, That if the charges and rewards for salvage directed to be paid by the said Act of the twelfth year of the reign of her said late Majesty Queen *Anne* and by this present Act shall not be fully paid or sufficient security given for the same within forty days next after the said services performed, then and in such case it shall be lawful for the officer of the customs concerned in such salvage to borrow or raise so much money as shall be sufficient to satisfy and pay such charges and rewards or any part thereof then remaining unpaid or not secured as aforesaid, by or upon one or more bill or bills of sale under his hand and seal of the ship or vessel or cargo saved or such part thereof as shall be sufficient, redeemable nevertheless upon payment of the principal sum so borrowed and interest for the same after the rate of four pounds *per centum per annum*.

No. XIII. 26 Geo. II. c. 19.

Where Oath shall be made of Plunder, &c. contrary to 12 Anne, st. 2. c. 18. and Examination to be delivered to Clerk of the Peace, he is to prosecute.

VIII. And be it further enacted by the authority aforesaid, That if oath shall be made before any magistrate lawfully empowered to take the same of any such plunder or theft and the examination in writing thereupon taken shall be delivered to the clerk of the peace of the county riding or division wherein such fact shall be committed or to his deputy; or if oath shall be made before any such magistrate of the breaking any ship contrary to the aforesaid Act made in the twelfth year of the reign of her said late Majesty Queen *Anne*, and the examination in writing thereupon taken shall be delivered to such clerk of the peace or his deputy; then such clerk of the peace shall cause the offender or offenders in any of the said cases to be forthwith prosecuted for the same either in the county where the fact shall be committed or in any county next adjoining; in which adjoining county any indictment may be laid by any other prosecutor; and if the fact be committed in *Wales* then the prosecution shall or may be carried on in the next adjoining *English* county; and the necessary charges of such prosecutions by the clerk of the peace shall be paid by the treasurer of the county riding or division where the fact shall be committed, to such amount as the justices of the peace in their general or quarter sessions shall order and ascertain the same; and if such clerk of the peace shall neglect or refuse to carry on such prosecution in due manner he shall forfeit one hundred pounds for every such offence, to any person or persons who shall sue for the same by action of debt bill plaint or information in any of his Majesty's courts of record at *Westminster*; in which action no essoign protection wager of law or more than one imparlance shall be allowed.

Officers for putting this and 12 Anne, st. 2. c. 18. in execution.

IX. And be it further enacted by the authority aforesaid, That the commissioners of the land-tax the deputy-sheriff the coroner and the officers of excise in each county riding and division shall be proper officers for putting in execution this present Act and the said Act made in the twelfth year of the reign of her late Majesty Queen *Anne*, together with those therein respectively named for that purpose.

3 Geo. 1. c. 13. Officers for putting this and 12 Anne in execution within the Liberty of the Cinque Ports, &c.

X. 'And whereas by an Act made in the third year of the reign of his 'late Majesty King *George* the First, intituled *An Act for the better re-* 'gulating of Pilots for the conducting of Ships and Vessels from Dover, 'Deal *and the Isle of* Thanet *up the Rivers of* Thames *and* Medway, it is 'enacted, That the lord warden of the Cinque Ports for the time being 'shall nominate and appoint by an instrument under his hand and seal 'three or more substantial persons in each of the Cinque Ports two 'ancient Towns and their members to adjust and determine, within the 'space of twelve hours, differences which shall or may arise within the 'jurisdiction of the Cinque Ports relating to the salvage of anchors and 'cables from which vessels shall or may be forced by extremity of wea-'ther.' Now it is hereby enacted, That the lord warden of the Cinque Ports for the time being, and the lieutenant of *Dover Castle* for the time being, and the deputy warden of the Cinque Ports for the time being, and the judge official and commissary of the Court of Admiralty of the Cinque Ports two ancient Towns and the members thereof for the time being, and all and every of them and all and every other person and persons appointed or to be appointed by the lord warden of the Cinque Ports for the time being, pursuant to the said Act made in the third year of his late Majesty's reign, shall be the persons to put in execution within the liberty and jurisdiction of the Cinque Ports two ancient Towns and their members all the powers and authorities given and granted in and by this Act and in and by the before-mentioned Act of Parliament made in the twelfth year of her said late Majesty Queen *Anne*; and also in and by the said Act made in the fourth year of the reign of his said late Majesty King *George* the First; and also shall and may execute perform and do within the jurisdictions aforesaid all the acts matters and things contained in this and the before-mentioned statutes in like and as full and ample manner to all intents and purposes as any justice or justices of peace or any other person or persons are by this and the said Acts appointed or authorised to do in any other part of the kingdom.

XI. And be it further enacted by the authority aforesaid, That if any sheriff or his deputy justice of the peace mayor or other magistrate coroner lord of a manor commissioner of the land-tax chief constable or petty constable or other peace officer or any custom-house or excise officer or other person lawfully authorised shall be assaulted beaten and wounded for or on account of the exercise of his or their duty in or concerning the salvage or preservation of any ship or vessel in distress, or of any ship or vessel goods or effects stranded wrecked or cast on shore or lying under water in any of his Majesty's dominions, then any person or persons so assaulting beating and wounding shall upon trial and conviction by indictment at the assizes or general gaol-delivery, or at the general or quarter sessions for the county riding or division where such offence shall be committed, be transported for seven years to some of his Majesty's colonies in *America*, and shall be subject to such subsequent punishment in case of return before that time as other persons under sentence of transportation are by the law subjected unto.

Persons convicted of assaulting any Magistrate, &c. in the Salvage, to be transported.

XII. And be it further enacted by the authority aforesaid, That it shall be lawful for any one or more of his Majesty's justices of the peace, in case of need and in the absence of the high sheriff, to take sufficient power of the county to repress all unjust violence and duly to enforce the execution of this Act.

Justice in absence of Sheriff may take Force to repress Violence, &c.

XIII. And to prevent confusion among persons assembled to save any ship vessel goods or effects as aforesaid, either for want of proper orders or by contradictory orders; Be it further enacted, That all persons so assembled shall conform in the first place to the orders of the master or other officers or owners or other persons employed by them; and for want of their presence or directions then in the next place to the orders of the persons authorised by this Act or the aforesaid Act of Queen *Anne* in the like manner in the following subordination as any of the said persons shall happen to be present; that is to say, in the first place to the orders of any officer or officers of the customs; then of any officer or officers of the excise; then of the sheriff or his deputy; then of any justice or justices of the peace; then of the mayor or chief magistrate of any corporation; then of the coroner; then of any commissioners of the land-tax; then of any chief constable; then of any petty constable or other peace officers: and any person whatsoever acting knowingly and wilfully contrary to such orders shall forfeit any sum not exceeding five pounds, to be levied by warrant of one justice of the peace; and in case of non-payment the offender shall be committed to the house of correction for any time not exceeding three months.

Persons empowered to give Orders, where any shall be assembled in case of a Shipwreck, &c.

Persons acting contrary to Orders forfeit 5*l.*

XIV. Provided always and it is hereby enacted, That neither this Act nor any thing herein contained shall any way extend to deprive or prejudice his royal Majesty his heirs or successors or any claiming under them, or any patentee or grantee of the Crown, or any lord or lords of any manor or manors or other person whomsoever of or in relation to any right which they or any of them have or may have or lawfully claim to any wreck or wrecks or any goods which are or shall be *flotsam jetsam* or *lagan*, but that such respective rights shall be enjoyed in as full ample and beneficial a manner in every respect as if this Act had never been made.

Rights of the Crown, &c.

XV. And be it further enacted by the authority aforesaid, That the officer of the customs who shall act in the preserving of any ship or vessel in distress or the cargo thereof shall as soon as conveniently may be cause or procure all persons belonging to the said ship or vessel and others who can give any account thereof or of the cargo thereof to be examined upon oath before some justice of the peace as to the name or description of the said ship or vessel and the names of the master commander or chief officer and owners thereof and of the owners of the said cargo and of the ports or places from or to which the said ship or vessel was bound and the occasion of the said ship's distress; which examination the said justices are hereby required to take down in writing, and they shall deliver a true copy thereof together with a copy of the said account of the goods to the said officer of the customs, who shall forth-

Examination on Oath to be taken of the Ship's Name, &c.

No. XIII. 26 Geo. II. c. 19.

with transmit the same to the Secretary of the Admiralty for the time being, who shall publish or cause to be published in the next *London Gazette* so much thereof as shall or may be necessary for the information of the persons interested or concerned therein.

12 Anne, St. 2. c. 18. and 4 Geo. 1. c. 12. to be in Force where not altered.

XVI. And be it further enacted by the authority aforesaid, That the before-mentioned Act of Parliament made in the twelfth year of her said late Majesty Queen *Anne*, and also an Act made in the fourth year of the reign of his late Majesty King *George* the First, for enforcing and making perpetual the before-mentioned Act, and for inflicting the punishment of death on such as shall wilfully burn or destroy ships, shall in all things remain in full force save only so far as the same are altered or changed by this present Act.

Commencement of this Act.

XVII. And be it further enacted by the authority aforesaid, That this Act shall take place from the twenty-ninth day of *September* in the year of our Lord one thousand seven hundred and fifty-three.

Not to extend to Scotland.

XVIII. Provided, That nothing in this Act contained shall extend or be construed to extend to that part of *Great Britain* called *Scotland*.

[No. XIV.] 13 George III. c. 26.—An Act for preventing Abuses in the Sale of Shares of *British*-built Ships to Foreigners.

[No. XV.] 21 Geo. III. c. 39.—An Act for further securing the Property of the Owners in such Ships or Vessels as are liable to Forfeiture for importing Spirits or other Goods, by the Misconduct of the Masters, Mates, and Seamen.

21 Geo. III. c. 39. 19 Geo. 3. c. 69.

'WHEREAS by an Act made in the nineteenth year of the reign of his present Majesty, intituled, *An Act for the more effectually preventing the pernicious Practices of Smuggling in this Kingdom, and for indemnifying Persons who have been guilty of Offences against the Laws of the Customs and Excise upon the Terms therein mentioned*, it is amongst other things enacted, That where any foreign brandy or other foreign spirituous liquors shall be imported or brought into *Great Britain* or into any port harbour haven or creek thereof from any part of *Europe*, in any vessel or cask which shall not contain sixty gallons at the least (excepting only for the use of the seamen then belonging to and on board the ship or vessel in which the same shall be imported, not exceeding two gallons for each seaman) then not only the said brandy and other foreign spirituous liquors but also the ship or vessel in which the same shall be so imported, of whatever burthen the same may be, with all her guns furniture ammunition tackle and apparel shall be forfeited and lost: And whereas by the said recited Act it is further enacted, That when any tea coffee foreign brandy or other foreign spirituous liquors are liable to forfeiture for being found on board any ships or vessels coming or arriving from foreign parts at anchor or hovering within the limits of any of the ports of this kingdom or within two leagues of the coasts thereof, or for having been discovered to have been within the limits of any port contrary to any Act of Parliament now in force, the ship or vessel if coming or arriving from any part of *Europe*, on board of which such goods shall be so found together with all her guns furniture ammunition tackle and apparel shall be forfeited, provided such ship or vessel doth not exceed the burthen of two hundred tons: And whereas by the aforesaid in part recited Act and several other Acts of Parliament ships or vessels of the descriptions therein mentioned are liable to seizure and forfeiture for clandestinely importing or having on board any quantity of foreign spirituous liquors tea or coffee whatsoever, over and above the limited quantities of such goods

'now allowed by law to be imported, whereby the owners of such ships 'or vessels may sustain great loss and injury in their property by the 'misconduct of the masters mates and mariners navigating such ships 'or vessels: And whereas it would not only tend to the further security 'of the owners of ships or vessels of all descriptions and of whatever 'burthen the same may be which by any law now in force are liable to 'forfeiture, but also be a means to prevent the illicit practice of smug-'gling, if some further punishment was inflicted upon the masters mates 'and seamen having the charge and command of such ships or vessels:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* One thousand seven hundred and eighty-one if the master of any ship or vessel of which he has the charge and command shall clandestinely hide or conceal or suffer to be clandestinely hid or concealed by his mate or seamen or any of them, in any part of such ship or vessel or in any chest or other thing belonging thereto, any quantity of foreign spirituous liquors (over and above the quantity of two gallons for each seaman on board), or any quantity of tea above the weight of six pounds, or any quantity of coffee above the weight of nineteen pounds; or if the master of such ship or vessel shall clandestinely import or suffer to be clandestinely imported therein, any such foreign or spirituous liquors or any other uncustomed goods whatsoever whereby the owner or owners of such ship or vessel become liable to any penalties or whereby such ship or vessel itself is liable to be forfeited, the master of such ship or vessel shall not only forfeit to the owner or owners of such ship or vessel all his wages that shall be then due to him, but shall also forfeit treble the value of all such foreign spirituous liquors tea coffee or any other uncustomed goods whatsoever over and above the penalties to which the master of such ship or vessel shall be subject and liable by any of the laws now in force; which said penalties of treble the value of such goods so inflicted by this Act as aforesaid shall be recovered of the said master by and shall go to the owner or owners of such ship or vessel and to no other person whatsoever.

If the Master of any Vessel shall conceal, &c. Foreign Spirits, &c. above a limited quantity, or any other uncustomed Goods, he shall forfeit to his Owners all his Wages, &c.

II. And be it further enacted by the authority aforesaid, That if the mates or seamen serving on board any ship or vessel of any burthen whatsoever shall clandestinely hide or conceal on board thereof or shall import any quantity of foreign spirituous liquors whatsoever (over and above the ordinary allowance of two gallons for each seaman on board) or any quantity of tea above the weight of six pounds, or any quantity of coffee above the weight of nineteen pounds, then such mates or seamen or any of them so offending therein shall forfeit to the owner or owners of such ship or vessel all the wages that shall be then due to him or them, and shall also forfeit the sum of ten shillings each for every gallon of such foreign spirituous liquors, and ten shillings a pound for every pound of such tea, and also a like sum of ten shillings for every pound of such coffee, so by them clandestinely concealed or imported over and above the quantities of such goods now limited by law to be imported.

If Mates or Seamen shall conceal, &c. they forfeit their Wages, and also, &c.

III. And be it further enacted by the authority aforesaid, That if such mates or seamen shall commit such offences as aforesaid or any of them in time of war, and which according to the true intent and meaning of this or any other Act they are restrained from committing, it shall and may be lawful to and for the owner of such ship or vessel to send such mates or seamen or any of them on board some of his Majesty's ships of war, there to serve for the space of three years, except such as are old disabled or otherwise unfit for such service.

IV. And be it further enacted by the authority aforesaid, That this Act shall be printed put up and continued on some conspicuous part of every *British* ship or vessel trading to or from any port of this kingdom; and that wherever the said printed clauses shall be damaged defaced or

A printed Copy of this Act to be put up on some conspicuous part of every British trading Vessel.

No. XV. 21 Geo. III. c. 39.

destroyed the master of such ship or vessel shall cause the same to be immediately replaced under the penalty of one shilling a day for every day during such omission thereof; to be recovered of the said master by and be paid to the owner or owners of such ship or vessel by virtue of a warrant under the hands and seals of one or more of his Majesty's justices of the peace.

Mates or Seamen who shall refuse to pay the Penalties, &c. may be committed for Three Months.

V. And be it further enacted by the authority aforesaid, That if such mates or seamen who shall be so disabled from serving in any of his Majesty's ships of war in time of war as aforesaid, or if such or any other mates or seamen shall be found offending against the provisions of this Act in time of peace, and shall neglect or refuse to pay the aforesaid penalties being duly convicted thereof, or shall not have sufficient effects to answer the same, it shall and may be lawful (at the instance of the owner or owners of such ship or vessel) for one or more of his Majesty's justices of the peace by warrant under his or their hands and seals to commit such offender or offenders to the county gaol where such offence shall be committed, or where such offender or offenders shall be apprehended or taken, for the space of three months and not less than six weeks.

Justices may mitigate Penalties.

VI. And it is hereby further enacted by the authority aforesaid, That it shall and may be lawful to and for the said justice or justices to mitigate compound or lessen any of the penalties incurred under this Act, so as such mitigation do not extend to remit above one moiety or half part of the said penalties respectively.

Certiorari, &c.

VII. And it is hereby further enacted by the authority aforesaid, That no order which shall be made by the said justice or justices of the peace by virtue or in pursuance of this Act or any other proceedings to be had touching the conviction or convictions of any offender or offenders against this Act shall be quashed or vacated or be removed or removeable by *certiorari* or any other writ or process whatsoever into any of his Majesty's courts of record at *Westminster* or to the general quarter sessions of the peace; but that the order and determination of such justice or justices shall be final and conclusive in all cases and to all intents and purposes whatsoever.

Limitation of Actions.

VIII. And it is hereby further enacted by the authority aforesaid, That if any person or persons shall at any time or times be sued or prosecuted for any thing by him or them done or executed in pursuance of or by colour of this Act or any matter or thing in this Act contained, such action or prosecution shall be commenced within the space of six months after the offence shall be committed; and such person or persons shall and

General Issue.

may plead the general issue and give this Act and the special matter in evidence for his and their defence and that the same was done in pursuance and by authority of the said Act: and if it shall appear so to have been done then the jury shall find for the defendant or defendants; and if the plaintiff shall be nonsuited or discontinue his action after the defendant or defendants have appeared; or if judgment shall be given

Treble Costs.

upon any verdict or demurrer against the plaintiff the defendant or defendants shall and may recover treble costs and have the like remedy for the same as the defendant or defendants hath or have in other cases by law.

[No. XVI.] 22 George III. c. 25.—An Act to prohibit the ransoming of Ships or Vessels captured from his Majesty's Subjects, and of the Merchandize or Goods on board such Ships or Vessels. (1.)

22 Geo. III. c. 25.

'WHEREAS it is a common practice when ships or vessels are captured by the king's enemies or by other persons committing acts

(1.) A Purchase by Auction, after the Ship is taken into a neutral port and condemned by a Sentence, ruled to be illegal, as a ransom within this Act, and the Money paid cannot be recovered from the Underwriters, (the loss being holden an average one.)—Havelock *v.* Nothwood, 6 T. R. 268. The Ransom Acts must be considered as remedial Laws, and in the construction of such Acts, it is the rule to extend the remedy so as to meet the mischief—see Parsons *v.* Scott, 2 Taunt. 363—Webb *v.* Barber, 3 Taunt. 6.

'of hostilities for persons to agree with the captors for ransom of the same; and for securing the stipulated ransom not only to give hostages but also to bind themselves or the owners for the payment thereof: 'And whereas the practice of ransoming is found by experience to be 'liable to great abuses, and there is reason to apprehend that upon the 'whole it operates more to the disadvantage than for the benefit of his 'Majesty's subjects:' May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same, That from and after the first day of *June* one thousand seven hundred and eighty-two it shall not be lawful for any of his Majesty's subjects to ransom or to enter into any contract or agreement for ransoming any ship or vessel belonging to any of his Majesty's subjects or any merchandize or goods on board the same which shall be captured by the subjects of any state at war with his Majesty or by any persons committing hostilities against his Majesty's subjects.

Vessels, &c. captured by the Enemy not to be ransomed.

II. And be it further enacted, That all contracts and agreements which shall be entered into and all bills notes and other securities which shall be given by any person or persons for ransom of any such ship or vessel, or of any merchandize or goods on board the same contrary to this Act shall be absolutely void in law and of no effect whatsoever.

All Contracts void.

III. And be it further enacted by the authority aforesaid, That if any person or persons shall after the first day of *June* one thousand seven hundred and eighty-two ransom or enter into any contract or agreement for ransoming any such ship or vessel or any merchandize or goods on board the same, every person so offending shall for every such offence forfeit and lose the sum of five hundred pounds; to be recovered with full costs of suit by any person or persons who shall sue for the same by action of debt in any of his Majesty's courts of record at *Westminster* in which action no essoign protection imparlance or wager of law shall be allowed.

Penalty.

IV. Provided always and be it further enacted, That nothing herein contained shall extend or be construed to extend to make void any contract or agreement which shall be entered into, or any bill note or other security which shall be given by any master of a captured ship or vessel, or by any other person or persons on board or belonging to the same for ransom thereof, or of any merchandize or goods on board such ship or vessel; or to inflict any penalty upon any master of any captured ship or vessel or any other person or persons on board or belonging to the same for ransoming or entering into any contract or agreement for ransoming such ship or vessel, or any merchandizes or goods on board the same until after the expiration of two months from the passing of this Act for any ship or vessel sailing from any foreign *European* port: or until after the expiration of four months from the passing of this Act for any ship or vessel sailing from any foreign port out of *Europe*.

Limitation of this Act.

[No. XVII.] 26 George III. c. 60.—An Act for the further Increase and Encouragement of Shipping and Navigation.

'WHEREAS the wealth and strength of this kingdom and the prosperity and safety of every part of the *British* empire greatly depend 'on the encouragement given to shipping and navigation: And whereas 'it is proper that the advantages hitherto given by the legislature to 'ships owned and navigated by his Majesty's subjects should from hence-'forth be confined to ships wholly built and fitted in his Majesty's dominions:' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the first day of *August* one thousand seven

Preamble.

From August 1, 1786, no Ship built out of his Majesty's dominions,

except Prizes, shall be entitled to the Privileges of a British Ship; but Foreign Ships, built before May 1, 1786, not hereby to be deprived of the Privileges they now enjoy, &c.

No. XVII. 26 Geo. III. c. 60.

hundred and eighty-six no ship or vessel foreign-built (except such ships or vessels as have been or shall hereafter be taken by any of his Majesty's ships or vessels of war or by any private or other ship or vessel and condemned as lawful prize in any court of Admiralty) nor any ship or vessel built or rebuilt upon any foreign-made keel or bottom in the manner heretofore practised and allowed, although owned by *British* subjects and navigated according to law, shall be any longer entitled to any of the privileges or advantages of a *British*-built ship or of a ship owned by *British* subjects; and that all the said privileges and advantages shall hereafter be confined to such ships only as are wholly of the built of *Great Britain* or *Ireland Guernsey Jersey* and the *Isle of Man* or of some of the colonies plantations islands or territories in *Asia Africa* or *America* which now belong or at the time of building such ships or vessels did belong or which may hereafter belong to or be in the possession of his Majesty his heirs or successors: Provided always, That nothing herein-before contained shall extend or be construed to extend to prohibit such foreign-built ships or vessels only as before the first day of *May* one thousand seven hundred and eighty-six did truly and without fraud wholly belong to any of the people of *Great Britain* or *Ireland Guernsey Jersey* and the *Isle of Man* or of any of the aforesaid colonies plantations islands or territories as the proprietors and right owners thereof, and which shall be navigated according to law and shall also be registered in manner herein-after directed, from continuing to enjoy the privileges and advantages they have hitherto enjoyed, or from importing or exporting such goods or commodities as may now be legally imported or exported by such ships or vessels into and from such ports and places as is now by law allowed, and under such rules regulations and restrictions as have heretofore been made touching such foreign-built ships or vessels, and subject and liable to all such duties as have been imposed on any goods or commodities imported or exported as aforesaid in such foreign-built ships or vessels by any Act or Acts of Parliament: And provided also, That nothing herein contained shall extend or be construed to extend to deprive any ship or vessel which before the passing of this Act hath been built or rebuilt upon any foreign-made keel or bottom, and which before the said first day of *May* one thousand seven hundred and eighty-six was duly registered as a *British* ship, from continuing to enjoy any privilege or advantage to which such ship or vessel is now by any law or usage entitled; nor to prevent any such ship or vessel which shall have been begun to be repaired or rebuilt before the said first day of *May* one thousand seven hundred and eighty-six from being registered according to and in pursuance of this Act, by an order under the hands of the commissioners of his Majesty's customs in *England* or any four or more of them or of the commissioners of his Majesty's customs in *Scotland* or any three or more of them; which order the said commissioners respectively are hereby authorised and empowered to grant if it shall be made appear to the satisfaction of the said commissioners respectively upon oath that such ship or vessel was stranded by the act of Providence and not with a fraudulent intent, and was at the time of being so stranded the sole property of some foreigner or foreigners; or that such ship or vessel was a droit of Admiralty and it be in like manner fully and clearly ascertained to the satisfaction of such commissioners respectively that the said ship or vessel from the damage received by being so stranded was rendered unfit to proceed to sea without undergoing a thorough repair in this kingdom and that she was necessarily sold for the benefit of the foreign owner or owners, or being a droit of Admiralty was sold by virtue and under the authority of an order or commission from the court of Admiralty and that she was fairly and openly purchased by a *British* subject or subjects, and being the sole and entire property of such *British* subject or subjects that she hath been so much repaired that two-thirds of her at the least are of *British*-built.

No Ship rebuilt, or where Repairs exceed 15*s.* per Ton, in a Foreign Port, to be deemed British built.

II. And be it further enacted by the authority aforesaid, That from and after the first day of *August* one thousand seven hundred and eighty-six no ship or vessel shall be deemed or taken to be *British*-built or enjoy the privileges thereunto belonging which shall from thenceforth be rebuilt or

repaired in any foreign port or place if such repairs shall exceed the sum of fifteen shillings for every ton of the said ship or vessel according to the admeasurement thereof, unless such repairs shall be necessary by reason of extraordinary damage sustained by such ship or vessel during the absence of such ship or vessel from his Majesty's dominions, to enable her to perform the voyage in which she shall be then engaged and to return in safety to some port or place of the said dominions; and that before such ship or vessel shall be repaired so as to exceed the sum aforesaid the master or other person having or taking the charge or command of such ship or vessel shall report the state and condition thereof upon oath or (being a Quaker) upon affirmation to the *British* consul or other chief *British* officer, if there shall be such consul or officer at the port where it shall be necessary to repair such ship or vessel, and shall cause such ship or vessel to be surveyed by two fit and proper persons to be approved of by such consul or chief *British* officer; and shall deliver to such consul or chief *British* officer in writing the particulars of the damage sustained by such ship or vessel and shall verify upon oath or (being a Quaker) upon affirmation (to be administered by such consul or chief *British* officer) the particulars and amount of the repairs of such ship or vessel; and that the same were become necessary in consequence of damage sustained during the voyage to that port to enable such ship or vessel to prosecute the voyage then intended and to return to some port or place of his Majesty's dominions, which the said consul or chief *British* officer is hereby required to certify under his hand and seal; and if there shall not be any *British* consul or chief *British* officer resident at or near the port or place where such repairs may be necessary, then that such survey shall be made by two fit and proper persons to be approved of by two known *British* merchants residing at or near such port or place; and that such master or other person having or taking the charge or command of such ship or vessel shall produce to such merchants as aforesaid vouchers of the particulars and amount of the repairs of such ship or vessel, whose certificate of the same shall be of the like force and effect as that of the *British* consul or chief *British* officer resident in any foreign port or place; and in case any ship or vessel shall after the said first day of *August* one thousand seven hundred and eighty-six be repaired in any foreign port or place, the master or other person having or taking the charge or command thereof shall make proof on oath or (if a Quaker) by affirmation before the collector and comptroller or other principal officer of the customs in the port of his Majesty's dominions where the said ship or vessel may first arrive (if required by them so to do, which oath or affirmation the said collector and comptroller or other principal officer or either of them is and are hereby authorised and empowered to administer) describing the nature and amount of the charge or expence of such repairs; and if such charge or expence shall appear to exceed the before-mentioned sum of fifteen shillings for every ton of the admeasurement of such ship or vessel and the said master or other person having or taking the charge or command of such ship or vessel shall neglect or refuse to deliver to such collector and comptroller or principal officer of the customs or to one of them the certificate so required to be produced in such cases as aforesaid, the said ship or vessel shall be deemed and taken to be a foreign-built ship or vessel to all intents and purposes whatsoever.

Exception in favour of extraordinary Damages sustained on Voyages.

Expences of Repairs to be certified, on Arrival, to an Officer of the Customs.

III. 'And whereas it is highly expedient that the provisions made for 'the registry of ships and vessels by an Act made and passed in the 'seventh and eighth years of the reign of his late Majesty King *William* 'the Third, intituled *An Act for preventing Frauds and regulating Abuses* 'in the Plantation Trade, should be altered and amended and that the 'same should be extended and applied to ships and vessels other than 'those which are therein particularly described;' Be it therefore enacted, That all and every (1.) ship or vessel having a deck or being of the burthen of fifteen tons or upwards belonging to any of his Majesty's sub-

Provisions of Act 7 & 8 Gul. 3. c. 22. to be extended to Vessels of Fifteen Tons and upwards, and Certificates of Registry obtained.

(1.) In Long *v.* Duff, 2 B. & P. 209. it was held that Foreign Ships, British owned, are not required to be registered.

No. XVII. 26 Geo. III. c. 60.

jects in *Great Britain* or *Guernsey Jersey* and the *Isle of Man* or any of the aforesaid colonies plantations islands or territories shall from and after the respective times herein-after expressed be registered in manner herein-after mentioned; and that the person or persons claiming property therein shall cause the same to be registered and shall obtain a certificate of such registry from the collector and comptroller of his Majesty's customs in *Great Britain* or the *Isle of Man* or from the governor lieutenant-governor or commander in chief and principal officer or officers of his Majesty's revenue of customs residing in the islands of *Guernsey* or *Jersey* or in any of the said colonies plantations islands or territories respectively in manner herein-after directed; and that the form of such certificate shall be as follows; *videlicet*:

Certificate of British Registry.

"IN pursuance of an Act passed in the twenty-sixth year of the reign "of King *George* the Third, intituled *An Act* [*here insert the title of* "*the Act, the names, occupation and residence of the subscribing owners*] "having taken and subscribed the oath required by this Act and having "sworn that he [*or* they] together with [*names, occupation and residence of* "*non-subscribing owners*] is [*or* are] sole owner [*or* owners] of the ship or "vessel called the [*ship's name*] of [*place to which the vessel belongs*], "whereof [*master's name*] is at present master, and that the said ship or "vessel was [*when and where built or captured and date of condemnation*]; "and [*name and employment of the surveying officer*] having certified to us "that the said ship or vessel is [*whether British foreign or British planta-*"*tion built*], has [*number of decks*] decks and [*number of masts*] masts; "that her length from the fore-part of the main stem to the after-part of "the stern-post aloft is [*number of feet and inches*], her breadth at the "broadest part whether above or below the main wales [*number of feet* "*and inches*], her height between decks [*number of feet and inches if more* "*than one deck, and if not, then the* depth of the hold [*number of feet and* "*inches*], and admeasures [*burthen*] tons, that she is a [*kind of vessel and* "*how built*], has [*whether any or no gallery*] gallery and [*kind of head if* "*any*] head; and the said subscribing owners having consented and "agreed to the above description and admeasurement and having caused "sufficient security to be given as is required by the said Act, the said "[*kind and name of the vessel*] has been duly registered at the port of "[*name of the port.*]

"Given under our hands and seals of office at the Custom-"house, in the said port of [*name of the port*] this [*date*] day "of [*name of the month*] in the year [*words at length.*]"

No Registry made &c. but at the Port to which a Vessel belongs, except for Prizes condemned at Guernsey, &c. unless authorised by the Commissioners of the Customs.

IV. And be it further enacted by the authority aforesaid, That no such registry shall hereafter be made or certificate thereof granted by any person or persons herein-before authorised to make such registry and grant such certificate in any other port or place than the port or place to which such ship or vessel shall properly belong, except so far as relates to such ships or vessels as shall be condemned as prizes in any of the islands of *Guernsey Jersey* or *Man*, which ships or vessels shall in future be registered in manner herein-after directed; but that all and every registry and certificate granted in any port or place to which any such ship or vessel does not properly belong shall be utterly null and void to all intents and purposes, unless the officers aforesaid shall be specially authorised and empowered to make such registry and grant such certificate in any other port by an order in writing under the hands of any four or more of the commissioners of his Majesty's customs in *England* or of any three or more of the commissioners of his Majesty's customs in *Scotland* for the time being, which order the said commissioners are hereby respectively authorised and empowered to issue in manner aforesaid if they shall see fit.

The Port from and to which a Ship usually trades to be deemed her Port.

V. And be it further enacted by the authority aforesaid, That the port to which any ship or vessel shall hereafter be deemed and taken to belong within the intent and meaning of this Act shall be and is hereby declared to be the port from and to which such ship or vessel shall usually trade or (being a new ship) shall intend so to trade and at or near which

the husband or acting and managing owner or owners of such ship or vessel usually resides or reside.

VI. [No registry to be required for any vessels belonging to the Royal family.]

VII. [No ship built in the United States of *America*, &c. during the existence of any prohibitory Acts, entitled to be registered.]

VIII. And be it enacted by the authority aforesaid, That no subject of his Majesty his heirs and successors, whose usual residence is in any country not under the dominion of his Majesty his heirs and successors, shall be deemed or entitled during the time he shall continue so to reside to be the owner in whole or in part of any *British* ship or vessel required and authorised to be registered by virtue of this Act, unless he be a member of some *British* factory or agent for or partner in any house or copartnership actually carrying on trade in *Great Britain* or *Ireland*.

No Subject residing out of his Majesty's Dominions, to be entitled to be the Owner of any Ship authorised to be registered, except a Member of a Factory, &c.

IX. [Oath required by the recited Act of Gul. 3. repealed.]

X. And be it also enacted by the authority aforesaid, That no registry shall henceforth be made or certificate granted until the following oath be taken and subscribed before the person or persons herein-before authorised to make such registry and grant such certificate respectively (which they are hereby respectively empowered to administer) by the owner of such ship or vessel if such ship or vessel is owned by or belongs to one person only; or in case there shall be two joint owners, then by both of such joint owners if both shall be resident within twenty miles of the port or place where such register is required, or by one of such owners if one or both of them shall be resident at a greater distance from such port or place; or if the number of such owners or proprietors shall exceed two, then by the greater part of the number of such owners or proprietors if the greater number of them shall be resident within twenty miles of such port or place as aforesaid, not in any case exceeding three of such owners or proprietors, or by one of such owners if all shall be resident at a greater distance.

No Registry to be made, &c. till the following Oath be taken.

" I *A. B.* of [*place of residence and occupation*] do make oath, That the " ship or vessel [*name*] of [*port or place*], whereof [*master's name*] is " at present master, being [*kind of built, burthen*, etcetera, *as described in the* " *certificate of the surveying officer*], was [*when and where built, or, if prize,* " *capture and condemnation*], and that I the said *A. B.* [*and the other owners,* " *names and occupations, if any, and where they respectively reside*, videlicet, " *town, place or parish and county, or if member of and resident in any factory* " *in foreign parts, or in any foreign town or city, being an agent for or partner* " *in any house or copartnership actually carrying on trade in* Great Britain " *or* Ireland, *the name of such factory, foreign town or city and the names of* " *such house or copartnership*] am [*or* are] sole owner [*or* owners] of the " said vessel, and that no other person or persons whatever hath or have any " right title interest share or property therein or thereto; and that I the " said *A. B.* [*and the said other owners, if any*] am [*or* are] truly and *bona* " *fide* a subject [*or* subjects] of *Great Britain;* and that I the said *A. B.* " have not [*nor have any of the other owners to the best of my knowledge* " *and belief*] taken the oath of allegiance to any foreign state whatever " [*except under the terms of some capitulation describing the particulars* " *thereof*], or that since my taking [or *his* or *their taking*] the oath of " allegiance to [*naming the foreign states respectively to which he or any of* " *the said owners shall have taken the same*], and prior to the passing of " an Act in the twenty-sixth year of the reign of King *George* the Third, " (intituled *An Act for the further Increase and Encouragement of Ship-* " *ping and Navigation,*) I have [or *he* or *they hath* or *have*] become a sub- " ject [*or* subjects] of *Great Britain* [*either by his Majesty's letters patent* " *as a denizen or denizens or naturalized by Act of Parliament as the case* " *may be, naming the dates of the letters of denization or the Act or Acts of* " *Parliament for naturalization respectively*] or [*as the case may be*] I have " [or *he* or *they have*] become a denizen [*or* denizens] *or* naturalized sub- " ject *or* subjects [*as the case may be*] of *Great Britain*, by his Majesty's

No. XVII. 26 Geo. III. c. 60.

" letters patent or by an Act of Parliament passed since the first day of " *January* one thousand seven hundred and eighty-six [*naming the times* " *when such letters of denization have been granted respectively, or the year* " *or years in which such Act or Acts of naturalization have passed respec-* " *tively*], and that no foreigner directly or indirectly hath any share or " part or interest in the said ship or vessel."

Addition to be made to the Oath when the requisite Number of Members do not attend.

XI. And be it further enacted by the authority aforesaid, That in case the number of joint owners or proprietors of any ship or vessel shall amount to three or more, and three of such joint owners or proprietors shall not personally attend to take and subscribe the oath herein-before directed to be taken and subscribed, then and in such case such owner or owners proprietor or proprietors as shall personally attend and take and subscribe the oath aforesaid shall further make oath that the part owner or part owners of such ship or vessel then absent is or are not resident within twenty miles of such port or place and hath or have not to the best of his or their knowledge or belief wilfully absented himself or themselves in order to avoid the taking the oath herein-before directed to be taken and subscribed, or is or are prevented by illness from attending to take and subscribe the said oath.

XII. [Ships to be examined, &c. before certificates are granted, &c.]

Persons giving false Descriptions, or making false Registries, &c. of Ships, forfeit 100*l.*

XIII. And be it also enacted by the authority aforesaid, That if such person or persons so appointed to examine and admeasure such ships or vessels as aforesaid, shall wilfully deliver to any person or persons authorised to make registry and grant certificates of registry as aforesaid a false description of any of the particulars hereby required to be contained in such certificate; or if any person or persons herein-before authorised to make such registry and grant such certificates of registry shall knowingly make any false register or grant any false certificate in regard to any of the particulars required by this present Act, he or they on being convicted thereof by due course of law in any of his Majesty's courts of record at *Westminster*, in the Court of Justiciary or the Court of Exchequer in *Scotland*, or in any court of record in the said colonies plantations islands or territories, or in the Royal Court in *Guernsey Jersey* or in the Superior Court of Justice in the *Isle of Man*, as the case may be, shall respectively forfeit the sum of one hundred pounds, and be for ever incapable of holding or enjoying any office or employment under his Majesty.

XIV. [Method of ascertaining the tonnage when vessels are afloat.]

XV. [Bond to be given not to lend certificates, and to return them in cases herein specified. Mediterranean passes to be delivered up with certificates.]

Tenor of Indorsements on Certificates of Registry, &c.

XVI. 'And whereas the provisions made in and by the said recited 'Act touching the indorsement on certificates of registry, in case of any 'alteration of the property in any ship or vessel, in the same port to 'which the ship or vessel belongs, have been found insufficient;' Be it therefore enacted by the authority aforesaid, That in every such case, besides the indorsement required by the said recited Act, there shall also be indorsed on the certificate (2.) of such registry before two witnesses, the town place or parish where all and every person or persons to whom the property in any ship or vessel or any part thereof shall be so transferred shall reside; or if such person or persons usually reside in any country not under the dominion of his Majesty his heirs and successors, but in some *British* factory, the name of such factory of which such person or persons is or are member or members; or if such person or persons reside in any foreign town or city and are not members of some *British* factory, the name of such foreign town or city where such person

(2) This must be on a subsisting Certificate. A Certificate was granted to the Owner, which upon sale to B. was given up and cancelled, and a new Certificate granted, but no Indorsement was made until three years afterwards, and after B. had become Bankrupt, when it was made upon the cancelled Certificate, and dated of the time of the transfer. Ruled, that this gave no title to the Assignees of B. to recover against the Defendant, to whom a subsequent transfer had been made, not accompanied by the proper requisites.—Moss *v.* Mills, 6 E. 144.

or persons usually reside, and also the names of the house or copartnership in *Great Britain* or *Ireland*, for or with whom such person or persons is or are agent or partner or agents or partners; and the person or persons to whom the property of such ship or vessel shall be so transferred or his or their agent shall also deliver a copy of such indorsement to the person or persons authorised to make registry and grant certificates of registry as aforesaid, who are hereby required to cause an entry thereof to be indorsed on the oath or affidavit upon which the original certificate of registry of such ship or vessel was obtained; and shall also make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof to the commissioners of his Majesty's Customs in *England* or *Scotland*, under whom they respectively act.

Certificate to be recited in all Transfers of Property.

XVII. And be it further enacted by the authority aforesaid, That when and so often as the property in any ship or vessel belonging to any of his Majesty's subjects shall be transferred to any other or others of his Majesty's subjects in whole or in part, the certificate of the registry (3.) of such ship or vessel shall be truly and accurately recited in words at length in the bill or other instrument of sale thereof, and that otherwise such bill of sale shall be utterly null and void to all intents and purposes (4).

Changes of Masters of Vessels to be indorsed on Certificates of Registry, &c.

XVIII. And be it further enacted by the authority aforesaid, That when and so often as the master or other person having or taking the charge or command of any ship or vessel registered in manner hereinbefore directed shall be changed, the master or owner of such ship or vessel shall deliver to the person or persons herein-before authorised to make such registry and grant such certificates of registry at the port where such change shall take place the certificate of registry belonging to such ship or vessel; who shall thereupon indorse and subscribe a memorandum of such change, and shall forthwith give notice of the same to the proper officer of the port or place where such ship or vessel was last registered pursuant to this Act; who shall likewise make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof to the commissioners of his Majesty's customs in *England* and *Scotland* respectively.

No Change to be made in Ships' Names, which, and their Ports, must be painted conspicuously on the Vessels.

XIX. 'And whereas many frauds are committed by the frequent 'change of names given to ships and vessels, and the difficulty of com- 'paring the entry in the book of registers, herein-after directed to be 'kept by all such person or persons as are authorised to register ships 'and vessels, and to grant certificates of the same, with the registers of 'which they claim the benefit, is thereby greatly increased;' Be it therefore enacted by the authority aforesaid, That it shall not be lawful for any owner or owners of any ship or vessel to give any name to such ship or vessel other than that by which she was first registered in pursuance of this Act; and that the owner or owners of all and every ship or vessel which shall be so registered shall within one month from the time of such registry paint or cause to be painted in white or yellow letters of a length not less than four inches upon a black ground on some conspicuous part of the stern (provided there shall be sufficient space for that purpose, but if not then in letters as large as such space will admit) the name by which such ship or vessel shall have been registered pursuant to this Act, and the port to which she belongs in a distinct and legible manner, and shall so keep and preserve the same; and that if such owner or owners or master or other person having or taking the charge or command of such ship or vessel shall wilfully alter erase obliterate or in anywise hide or conceal or cause or procure or permit the same to be done, unless in the case of square-rigged vessels in time of

100*l.* Penalty, on altering, &c. Names.

(3.) Ruled, Capadose v. Codnor, 2 B. & P. 483. that a recital of the Indorsement of the Certificate was not necessary under the Clause, but it is now required by 34 Geo. III. c. 68. §. 15.

(4.) As to the general operation of the Register Acts, with respect to the transfer of Ships, see Note to 34 Geo. III. c. 68. (post) §. 14.

No. XVII. 26 Geo. III. c. 60.

war, or shall in any written or printed paper or other document describe such ship or vessel by any name other than that by which she was first registered pursuant to this Act, or shall verbally describe or cause or procure or permit such ship or vessel to be described by any other name, to any officer or officers of his Majesty's revenue, in the due execution of his or their duty, then and in every such case such owner or owners master or other person having or taking the charge or command of such ship or vessel shall forfeit the sum of one hundred pounds.

XX. [Persons applying for certificates in *Great Britain*, &c. to produce a particular account of the ships from the builders, and make oath to their identity.]

XXI. [Persons making application in the colonies, after Jan. 1, 1787, to conform to the particulars in the last clause.]

XXII. [If certificates be lost new ones to be granted, according to Act 15 Geo. II. c. 31.]

XXIII. [Security to be given on the receiving fresh certificates and oath made as herein-before directed, instead of the oath 15 Geo. II. c. 31.]

XXIV. [Ships if altered must be registered anew, or to be deemed foreign.]

XXV. [The condemnation of prizes and the particulars of the vessels, &c. must be produced, to entitle to a certificate of registry.]

XXVI. [Prizes condemned in *Guernsey*, &c. to be registered at *Southampton*, &c.]

XXVII. [The sum on oath, for which a prize sold in the colonies, to be subjoined to the certificate.]

XXVIII. [Certificate to express in what part the ship was built.]

XXIX. [Ships already registered to exchange their certificates for new ones, and others now required to be registered to apply for certificates, &c.]

XXX. [Times allowed for obtaining such certificates.]

XXXI. [Certificates may be granted, where from unavoidable necessity application could not be made in time limited.]

XXXII. [Ships leaving port without certificates to be forfeited.]

XXXIII. [If ships be found without the port to which they belong without certificates, bond must be given that they shall be procured: if square-rigged vessels cannot enter the ports to which they belong, certificates may be obtained upon their being surveyed, &c. at the port where they touch.]

Certificates of Registry to be produced at every Port, on Penalty of 100*l.*

XXXIV. And be it further enacted by the authority aforesaid, That after the expiration of the notice herein-before required the master or other person having or taking the charge or command of every ship or vessel which shall have been registered, and shall have procured a certificate of the registry according to the directions of this Act, shall upon demand produce such certificate of registry to the principal officer or officers of every port in his Majesty's dominions, or to the *British* consul or chief *British* officer in any foreign port to which such ship or vessel shall arrive, for the inspection of such officer or officers *British* consul or chief *British* officer, in order to satisfy him or them that she has been properly registered, under the penalty of one hundred pounds.

XXXV. [Certificates, &c. to be numbered, and an account of them to be transmitted to the commissioners of customs. Penalty for neglect.]

XXXVI. [Copies of certificates granted in *Scotland* to be annually transmitted to the custom-house in *England*.]

XXXVII. [Sums to be paid on first registry of ships built prior to May 1, 1786, in lieu of stamp-duties, &c. Stamp duties to continue to be paid on transfers of property.]

XXXVIII. [Privy Council may order ships to be registered to whom they have been granted or promised in consideration of their services, though not otherwise entitled thereto, &c.]

Suits commenced in the Colonies touching Registers granted, such Ships may be stopt till his Majesty's pleasure be known.

XXXIX. And be it further enacted, by the authority aforesaid, That it shall and may be lawful for any governor lieutenant-governor or commander in chief of any of his Majesty's colonies plantations islands or

territories, and they are hereby respectively authorised and required in any of the cases aforesaid, if any suit information libel or other prosecution or proceeding of any nature or kind whatever shall have been commenced or shall hereafter be commenced in any court whatever in any of the said colonies plantations islands or territories respectively, touching the force and effect of any register granted to any ship or vessel in any of the circumstances aforesaid, upon a representation made to any such governor lieutenant-governor or commander in chief, to cause all proceedings thereon to be staid if he shall see just cause so to do, until his Majesty's pleasure be known and certified to him by his Majesty, by and with the advice of his Privy Council; and such governor lieutenant-governor or commander in chief is hereby required to transmit to one of his Majesty's principal secretaries of state, to be laid before his Majesty in council, an authenticated copy of the proceedings in every such case, together with his reasons for causing the same to be staid, and such documents (properly verified) as he may judge necessary for the information of his Majesty.

Penalty on Neglect of Duty.

XL. And be it further enacted by the authority aforesaid, That if any person or persons authorised and required by this Act, in respect of his or their office or offices, to perform any act or thing directed and required to be done or performed pursuant to any of the provisions of this Act, shall wilfully neglect or refuse to do or perform the same, according to the true intent and meaning of this Act, every such person or persons so neglecting or refusing shall on being duly convicted thereof forfeit the sum of five hundred pounds, and for the second offence shall forfeit in like manner the sum of five hundred pounds, and shall from thenceforth be rendered incapable of serving his Majesty in any office or employment relative to the revenue, or in any civil capacity whatever.

Persons making false Oaths guilty of corrupt Perjury; and falsifying or using false Certificates to forfeit 500*l.*

XLI. And be it further enacted by the authority aforesaid, That if any person or persons shall falsely make oath to any of the matters hereinbefore required to be so verified, such person or persons shall suffer the like pains and penalties as are incurred by persons committing wilful and corrupt perjury; and that if any person or persons shall counterfeit erase alter or falsify any certificate required or directed to be obtained by this Act, or shall knowingly or wilfully make use of any certificate so counterfeited erased altered or falsified, such person or persons shall for every such offence forfeit the sum of five hundred pounds.

How Penalties are to be recovered, and what is the Officers share.

XLII. And be it further enacted by the authority aforesaid, That all the penalties and forfeitures inflicted and incurred by this Act shall and may be sued for prosecuted and recovered in such courts and be disposed of in such manner and by such ways means and methods as any penalties or forfeitures inflicted or which may be incurred for any offence committed against the laws of customs may now legally be sued for prosecuted recovered and disposed of; and that the officer or officers concerned in seizures or prosecutions under this Act shall be entitled to and receive the same share of the produce arising from such seizures as in the case of seizure for unlawful importation, and to such share of the produce arising from any pecuniary fine or penalty for any offence against this Act, as any officer or officers is or are now by any law or regulation entitled to upon prosecutions for pecuniary penalties.

All Acts relative to Trade to remain in force, except such Parts as are hereby repealed.

XLIII. And it is hereby declared and enacted by the authority aforesaid, That all and every matter contained in the said herein-before recited Acts or in any Act or Acts of Parliament heretofore passed, touching the trade shipping and navigation of *Great Britain* and the colonies plantations islands and territories aforesaid thereunto belonging, which is not hereby expressly altered or repealed, shall remain and continue in full force and effect to all intents and purposes whatever; and so far as the same relate to the registry of ships and vessels shall be deemed and taken to extend and apply in every respect to all ships and vessels authorised and required by this Act to be registered and to have certificates of registry.

Ships of Ireland lawfully qualified and registered there, to enjoy the Privileges of British-built Ships, &c.

XLIV. And be it enacted by the authority aforesaid, That the ships and

No. XVII. 26 Geo. III. c. 60.

vessels belonging to his Majesty's subjects residing in the kingdom of *Ireland*, being duly qualified and registered according to the laws now in force, shall continue to enjoy all the privileges and advantages to which such ships and vessels were by law entitled before the passing of this Act, until the end of four calendar months from the commencement of the first session of the Parliament of *Ireland* which shall hereafter sit during the space of four calendar months without prorogation or dissolution; and that from the end of that time every ship or vessel which shall by virtue of the authority of any Act that may be passed in the said Parliament of *Ireland* be qualified and registered in any of the ports of the said kingdom of *Ireland*, under similar regulations and restrictions to those herein-before contained, shall continue to enjoy to all intents and purposes whatsoever all the privileges and advantages of a *British*-built ship or foreign-built ship owned by his Majesty's subjects, as the case may be, according to the provisions of this Act.

[No. XVII. *a.*] 26 George III. c. 86.—An Act to explain and amend an Act, made in the Seventh Year of his late Majesty's Reign, intituled, *An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners;* and for giviug a further Relief to the Owners of Ships.

26 Geo. III. c. 86. Preamble.

Act 7 Geo. 2. c. 15. recited.

'WHEREAS by an Act made in the seventh year of the reign of his late Majesty King GEORGE the Second, intituled *An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners*, it is amongst other things enacted, That no owner or owners of any ship or vessel should be liable to answer for or make good to any person or persons any loss or damage by reason of any embezzlement, secreting or making away with (by the master or mariners or any of them) of any gold silver diamonds jewels precious stones or other goods or merchandize which should be shipped on board any ship or vessel, or for any act matter or thing damage or forfeiture done occasioned or incurred by the said master or mariners or any of them without the privity and knowledge of such owner or owners, further than the value of the ship or vessel with all her appurtenances and the full amount of the freight due or to grow due for and during the voyage wherein such embezzlement secreting or making away with or other malversation of the master or mariners should be made committed or done: And whereas all masters and captains and owners of ships or vessels are by law respectively subject or liable to answer for or make good to any person or persons the full value and amount of any goods or merchandize by such person or persons shipped or put on board any ship or vessel notwithstanding such goods or merchandize be lost by robbery fire or other accident (other than by the King's enemies the perils of the seas or the act of God) or unless the master or some of the ship's company are privy to such robbery, in which case alone the responsibility of the owners is by the said Act limited to the value of the ship and full amount of the freight: And whereas it is of the utmost consequence and importance to the general welfare of this kingdom to promote the increase of the number of ships and vessels, and to prevent any discouragement to merchants and others from being interested and concerned therein, which is likely to happen from the responsibility to which they are now exposed notwithstanding the salutary intention of the said Act:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the consent of the Lords Spiritual and Temporal and Commons in the present Parliament assembled, and by the authority of the same,

Owners of Ships not liable for any Loss of Goods shipped without their Privity, further than the Value of the Vessel and the Freight, after Sept. 1, 1786;

That no person or persons who is are or shall be owner or owners of any

ship or vessel shall be subject or liable to answer for or make good to any one or more person or persons any loss or damage by reason of any robbery embezzlement secreting or making away with of any gold silver diamonds jewels precious stones or other goods or merchandize which from and after the first day of *September* one thousand seven hundred and eighty-six shall be shipped taken in or put on board any ship or vessel, or for any act matter or thing damage or forfeiture done occasioned or incurred from and after the passing of this Act without the privity and knowledge of such owner or owners, further than the value of the ship or vessel with all her appurtenances and the full amount of the freight due or to grow due for and during the voyage wherein such robbery embezzlement secreting or making away with as aforesaid shall be made committed or done, although the master or mariners shall not be in any wise concerned in or privy to such robbery embezzlement secreting or making away with; any law usage or custom to the contrary thereof in any wise notwithstanding.

nor for any Loss occasioned by Fire on board:

II. And be it further enacted by the authority aforesaid, That no owner or owners of any ship or vessel shall be subject or liable to answer for or make good to any one or more person or persons, any loss or damage which may happen to any goods or merchandize whatsoever which from and after the first day of *September* one thousand seven hundred and eighty-six, shall be shipped taken in or put on board any such ship or vessel by reason or means of any fire happening to or on board the said ship or vessel.

Nor for Loss of Gold, &c. unless at the Time of shipping, Declaration be made of the Value, &c.

III. 'And whereas disputes may arise whether the owners or masters 'of ships are liable to answer or make good the value or amount of any 'gold silver diamonds watches jewels or precious stones which may be 'lost after the same have been put on board their ships on freight 'without the shippers thereof declaring at the time the value of such 'goods;' Be it therefore enacted by the authority aforesaid, That no master owner or owners of any ship or vessel shall be subject or liable to answer for or make good to any one or more person or persons any loss or damage which may happen to any gold silver diamonds watches jewels or precious stones which from and after the passing of this Act shall be shipped taken in or put on board any such ship or vessel by reason or means of any robbery embezzlement making away with or secreting thereof, unless the owner or shipper thereof shall at the time of shipping the same insert in his bill of lading, or otherwise declare in writing to the master owner or owners of such ship or vessel, the true nature quality and value of such gold silver diamonds watches jewels or precious stones.

If Produce of Ship, &c. be insufficient to answer Losses, it is to be proportionally divided among the Losers.

IV. And be it further enacted by the authority aforesaid, That if several freighters or proprietors of any such gold silver diamonds jewels precious stones or other goods or merchandize shall suffer any loss or damage by any of the means aforesaid in the same voyage (fire only excepted) and the value of the ship or vessel with all her appurtenances and the amount of the freight due or to grow due during such voyage shall not be sufficient to make full compensation to all and every of them, then such freighters or proprietors shall receive their satisfaction thereout in average in proportion to their respective losses or damages: and in every such case it shall and may be lawful to and for such freighters or proprietors or any of them on behalf of himself and all other such freighters or proprietors, or to and for the owners of such ship or vessel or any of them, or on behalf of himself and all the other part owners of such ship or vessel to exhibit a bill in any court of equity for a discovery of the total amount of such losses or damages, and also of the value of such ship or vessel appurtenances and freight, and for an equal distribution and payment thereof amongst such freighters or proprietors in proportion to their respective losses or damages according to the rules of equity: Provided always, That if any such bill shall be exhibited by or on the behalf of the part owners of such ship the plaintiff or plaintiffs shall annex an affidavit to such bill or bills that he or they do not collude with any of the defendants thereto; and shall thereby offer to pay the

Freighters and Owners of Vessels may exhibit Bills in Equity for Discovery of Amount of Losses and Value of Vessels, &c.

No. XVII. *a.* 26 Geo. III. c. 86.

value of such ship or vessel appurtenances and freight as such court shall direct; and such court shall thereupon take such method for ascertaining such value as to them shall seem just, and shall direct the payment thereof in like manner as is now used and practised in cases of bills of interpleader.

Act not to lessen the Remedy against Masters and Mariners for Embezzlement, &c.

V. Provided always and it is hereby declared and enacted, That nothing in this present Act contained shall extend or be construed to extend to impeach lessen or discharge any remedy which any person or persons now hath or shall or may hereafter have against all every or any the master and mariners of such ship or vessel, for or in respect of any embezzlement secreting or making away with any gold silver diamonds jewels precious stones or merchandize shipped or loaded on board such ship or vessel, or on account of any fraud abuse or malversation of and in such master and mariners respectively; but that it shall and may be lawful to and for every person or persons so injured or damaged, to pursue and take such remedy for the same against the said master and mariners respectively as he or they might have done before the making of this Act.

Publick Act.

VI. And be it further enacted, That this Act shall be a publick Act; and be judicially taken notice of as such by all judges justices and other persons whomsoever without the same being specially pleaded.

℔. [No. XVIII.] 27 George III. c. 19.—An Act to enforce and render more effectual several Acts passed in the Twelth Year of the Reign of King *Charles* the Second, and other Acts made for the Increase and Encouragement of Shipping and Navigation.

27 Geo. III. c. 19.

Recital of Part of the Oath required to be taken by the Act 26 Geo. 3. c. 60.

IV. 'AND whereas by the before-mentioned Act passed in the twenty-sixth year of his Majesty's reign it is enacted, That no registry of 'any ship or vessel shall thenceforth be made until the owner or owners 'of such ship or vessel shall have taken an oath therein set forth in man-'ner therein directed, containing among others the words following; "That I the said *A. B.* (and the said other owners *if any*) am (*or* are) truly "and *bona fide* a subject (*or* subjects) of *Great Britain*; and that I the "said *A. B.* have not (nor have any of the other owners to the best of my "knowledge or belief) taken an oath of allegiance to any foreign state "whatever, except under the terms of some capitulations [*describing the "particulars thereof*:"] Be it enacted by the authority aforesaid, That any oath which shall have been or may be taken for the sole purpose of acquiring the rights of a citizen or burgher in any foreign city or town in *Europe*, to be enjoyed during the time that the person or persons taking such oath shall reside in such city or town, and for a limited time after such residence shall have expired, shall not be deemed an oath of allegiance to a foreign state within the true intent and meaning of the said Act.

No Oath taken to acquire a temporary Right, as a Citizen, during Residence in a Foreign State, to be deemed an Oath of Allegiance to such State.

Whenever the Master of a Vessel is changed, fresh Security to be given, &c.

VII. 'And whereas no provision is made in the said Act passed in 'the said twenty-sixth year of his present Majesty's reign, requiring 'fresh security by bond to be given whenever the master of a ship or 'vessel registered in pursuance thereof shall be changed:' Be it therefore enacted by the authority aforesaid, That when and so often as the master or other person having or taking the charge or command of any ship or vessel registered in manner therein directed shall be changed, the person who shall become master or take the charge or command of such ship or vessel shall give security by bond to be taken in the manner and under the penalties and conditions required by the said Act and this present Act; and upon such fresh security being from time to time given and the same being made to appear by indorsement on the original bond by the officers in whose custody it shall be, such original bond so far as it relates to the former master shall from thenceforth be null and void

(except with respect to any breach or breaches of the conditions of such bond which may have been committed before such indorsement.)

XIII. 'And for obviating all doubts which may arise touching the 'meaning and construction of the said Act made and passed in the 'twenty-sixth year of the reign of his present Majesty, intituled, *An Act 'for the further Increase and Encouragement of Shipping and Navigation,'* Be it enacted and declared, That all ships and vessels which by the said Act are declared not to be entitled to any of the privileges or advantages of a *British*-built ship owned by *British* subjects, and all ships and vessels not registred according to the directions and regulations of the said Act shall, although such ships and vessels may be owned by his Majesty's subjects, be held and deemed to all intents and purposes as alien ships, and shall in all cases be liable to such and the same penalties and forfeitures as alien ships in the like cases are or shall by law be liable to.

All Vessels which by 26 Geo. 3. c. 60. are declared not to be entitled to the Privileges of a British-built Ship, &c. to be deemed alien Ships.

[No. XIX.] 31 George III. c. 39.—An Act for the better Regulation and Government of Seamen employed in the Coasting Trade of this Kingdom.*

31 Geo. III. c. 39.

'WHEREAS by an Act made and passed in the second year of the 'reign of his late Majesty King *George* the Second, intituled *An 'Act for the better Regulation and Government of Seamen in the Merchants 'Service*, certain provisions are established for the government of Seamen 'in ships trading to parts beyond the seas which have been found by ex-'perience to be highly beneficial to the trade and navigation of this king-'dom: And whereas the coast trade of this kingdom still remains 'under great difficulties and inconveniences for want of the like regula-'tions to be applied to and established in the same for the better govern-'ment thereof: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the first day of *July* one thousand seven hundred and ninety-one it shall not be lawful for any master or commander or other person having or taking the charge or command of any ship or vessel trading from and to any port or place or ports or places in *Great Britain*, to carry out to sea any seaman or mariner (except his apprentice or apprentices) from any port or place in *Great Britain* to proceed on any voyage to any other port or place in *Great Britain*, without having before entered into any agreement or agreements in writing with such seaman or mariner, to be signed as well by such master or commander or other person as aforesaid as by such seaman or mariner for the wages which such seaman or mariner is to have respectively during the voyage or voyages, or during the time he shall have contracted or entered himself for; which contract or agreement shall declare what wages each seaman or mariner is to have and when the same shall be payable and for what time, or for what voyage or voyages such seaman or mariner shall have contracted or entered himself, every such agreement or agreements to be in force at the time of proceeding to sea on any such voyage; and in case any master or commander or other person having or taking the charge or command of any ship or vessel trading coastwise as aforesaid shall carry out to open sea any seaman or mariner (except his apprentice or apprentices) upon any such voyage by open sea without having first entered into such agreement or agreements signed as aforesaid, and such agreement or agreements then being in full force, such master or commander or other person having or taking the charge or command of such ship or vessel shall forfeit and pay the sum of five pounds for every such seaman or mariner which he shall so carry out to open sea to the use of *Greenwich Hospital*, to be recovered upon information on the oath

Preamble. 2 Geo. 2. c. 36. recited.

From July 1, 1791, no Masters of Vessels trading Coastwise, to proceed on a Voyage without entering into an Agreement with the Seamen for Wages, on Penalty of 5*l.* for each.

* See 45 Geo. III. c. 81. post.

No. XIX. 31 Geo. III. c. 39.

of one or more witness or witnesses before any one or more of his Majesty's justice or justices of the peace of any county riding shire or place in *Great Britain*, where such ship or vessel shall depart from or come to in or during such voyage, who are hereby authorised and required respectively to issue out his or their warrant or warrants to bring before him or them such master or commander or other person having or taking the charge or command of any such ship or vessel; and in case such master or commander or other person as aforesaid shall neglect or refuse to pay such penalty or forfeiture as aforesaid, to grant his or their warrant or warrants to levy the same by distress and sale of the offender's goods, and in case no distress can be found, to commit the offender to the common gaol of the city county town or place there to remain until he shall pay the same.

Agreements to be binding.

II. And be it further enacted, That every seaman or mariner entering himself on board any ship or vessel trading coastwise as aforesaid for any intended voyage or voyages or for any time to be stipulated in and by such agreement or agreements shall and he is hereby required and obliged to subscribe his signature or mark to such agreement or agreements respectively at the time of his so entering himself; which agreement or agreements after the same shall be so subscribed by such seaman or mariner, and signed by the master or commander or other person having or taking the charge or command of such ship or vessel, shall be conclusive and binding to all parties for and during the time or times so agreed or contracted for to all intents and purposes; any law custom or usage to the contrary in anywise notwithstanding.

Penalty on Seamen neglecting or refusing to proceed on Voyages for which they shall have engaged.

III. And be it further enacted by the authority aforesaid, That in case any seaman or mariner after he shall have entered into such agreement or agreements as aforesaid shall neglect or refuse to proceed on the intended voyage or voyages for which he shall have entered or upon which such ship or vessel shall be destined to proceed, every such seaman or mariner shall forfeit and pay to the owner or owners of such ship or vessel all such wages as shall be due to him at the time of his so neglecting or refusing to proceed on such voyage or voyages; and it shall and may be lawful upon complaint made of the same to any of his Majesty's justices of the peace within their respective jurisdictions, by the master or commander owner or owners or any other person or persons having charge or command of the ship or vessel to which such seaman or mariner did belong, for such justice and he is hereby required to issue his warrant to apprehend such seaman or mariner; and in case such seaman or mariner shall refuse to proceed on the voyage or voyages agreed on, or on the voyage or voyages on which the ship or vessel shall be destined to proceed within the time contracted for, and shall not give a sufficient reason for such refusal to the satisfaction of such justice, then to commit such seaman or mariner to the house of correction, there to be kept to hard labour for any time not exceeding thirty days nor less than fourteen days.

Penalty on Seamen absenting themselves, or deserting before the Expiration of the Time for which they shall have engaged.

IV. And be it enacted by the authority aforesaid, That in case any seaman or mariner, after having entered into such agreement or agreements as aforesaid, shall wilfully absent himself from the ship or vessel to which he shall belong before the voyage or voyages agreed upon, or upon which such ship or vessel shall have proceeded shall be completed and the cargo of such ship or vessel delivered, or before the time for which he shall have contracted or entered shall be expired, every such seaman and mariner shall for every day he shall be so absent from his said ship or vessel forfeit two days' pay to the use of *Greenwich Hospital*, to be recovered applied and disposed of as is hereinafter directed; and in case any seaman or mariner not entering into the service of his Majesty his heirs or successors shall totally leave or quit his said ship or vessel before the voyage or voyages agreed upon, or upon which such ship or vessel shall have proceeded shall be completed and the cargo of such ship or vessel delivered, or before the expiration of the time for which he shall have contracted or entered, or before such seaman or mariner shall have a discharge in writing from the master or commander or other person

having the charge or command of such ship or vessel, such seaman or mariner so leaving or quitting such ship or vessel shall forfeit one month's wages, to be recovered applied and disposed of as hereinafter is directed.

V. And be it further enacted by the authority aforesaid, That the master or commander or other person having or taking the charge or command of any ship or vessel employed in trading coastwise as aforesaid and contracting with any seaman or mariner to perform any such voyage shall and he is hereby obliged and required to pay to every such seaman or mariner belonging to such ship or vessel their wages if demanded within five days after such ship or vessel shall have entered at the custom-house or the cargo shall be delivered or at the time the said seamen or mariners shall be discharged, which shall first happen, unless an agreement shall have been made or entered into to the contrary, in which case the wages of such seamen or mariners shall be paid in terms of such agreement after deducting in every such case out of such wages the penalties and forfeitures by this Act imposed in case any shall have been incurred, upon pain of forfeiting to each seaman or mariner to whom payment of his wages shall not have been made according to this Act of the sum of twenty shillings, to be paid to each such seaman or mariner over and above the wages that shall be due to him, to be recovered by the same means and methods as the wages of seamen or mariners may by law be recovered; and such payment of wages as aforesaid shall be good and valid in law, notwithstanding any action bill of sale attachment or incumbrance whatsoever.

Masters to settle with the Men for their Wages, in the Manner herein directed, on Penalty of 20*s*.

VI. And be it further enacted, That no seaman or mariner by entering into or signing such contract or agreement as aforesaid shall be deprived of or hindered from using any means or methods for the recovery of wages against any ship or the masters or owners thereof which he may now lawfully make use of; and that in all cases where it shall or may be necessary that the agreement or agreements in writing aforesaid should be produced in court or elsewhere, no obligation shall lie on any seaman or mariner to produce the same, but such obligation shall lie on the master or commander or other person having the charge or command, or the owner or owners of the ship or vessel for which the wages shall be demanded; and no seaman or mariner shall fail in any suit action or process for recovery of wages for want of such agreement or agreements being produced, but shall and may proceed therein as if no such agreement in writing had been made; any law usage or custom to the contrary notwithstanding.

Seamen not deprived of the usual Means for Recovery of Wages, and, in case of Dispute, the Master to produce the Agreement.

VII. And be it further enacted, That the masters or commanders or owners of any such ships or vessels or other persons having the charge or command thereof shall and they hereby have full power and are required to deduct out of the wages of any seaman or mariner incurring the penalties and forfeitures imposed by this Act whenever the same shall be incurred, and to enter them in a book or books to be kept for that purpose, and to make oath if required to the truth thereof; which book or books shall be signed by the said master or commander or other person having the charge or command of each such ship or vessel respectively, setting forth that the penalties and forfeitures contained in such book or books are the whole penalties and forfeitures stopped from any seamen or mariners by such master or commander or other person as aforesaid; and which penalties and forfeitures (except the forfeitures of wages to the owners on any seamen or mariners refusing to proceed on their voyage or voyages) shall go to and be applied to the use of *Greenwich* Hospital and shall be paid and accounted for by the masters commanders and other persons having the charge or command of such ships or vessels to the officer of any port or place who shall collect the six pence *per* month deducted out of seamen's wages for the use of the said hospital, which officer shall have and hereby hath full power to administer an oath to every commander master or other person as aforesaid respectively touching the truth of such penalties and forfeitures.

Penalties to be deducted out of the Men's Wages, and applied (except those of the Owners) to the Use of Greenwich Hospital.

VIII. And be it further enacted, That in case any masters or com-

Penalty on Masters not paying the Penalties in Three Months after being so deducted.

No. XIX. 31 Geo. III. c. 39.

manders or owners of any such ships or vessels or other person having the charge or command thereof shall deduct out of the wages of any seamen or mariners any of the penalties and forfeitures which by this Act are directed to be deducted and applied to and for the use of *Greenwich* Hospital, and shall not pay the money so deducted to some officer who shall collect the six pence *per* month deducted out of seamen's wages for the use of the said hospital in the port or place where such deduction shall be made within three months after such deduction, every such person so neglecting to pay the money so deducted as aforesaid shall forfeit and pay treble the value thereof to the use of the said hospital; which together with the money deducted as aforesaid shall and may be recovered by the same means and methods as any penalties and forfeitures for not duly paying the said six pence *per* month can or may be recovered.

How Penalties are to be ascertained, where the Seamen contract for the Voyage.

IX. And be it further enacted by the authority aforesaid, That in all cases where the seamen or mariners of any ship or vessel trading coastwise as aforesaid have contracted or shall contract for wages by the voyage and not by the month or other stated period of time, the penalties and forfeitures to be incurred by such seamen or mariners under this Act shall be ascertained in manner following: (that is to say) if the whole time spent in the voyage agreed or proceeded upon shall exceed one lunar month the forfeiture of one month's pay shall be accounted and deemed a forfeiture of a sum of money bearing the same proportion to the whole wages as a lunar month shall bear to the whole time spent in the voyage; and in like manner the forfeiture of two days' pay shall be accounted and deemed a forfeiture of a sum of money bearing the same proportion to the whole wages as two days shall bear to the whole time spent in the voyage; and if the whole time spent in the voyage shall not exceed one lunar month the forfeiture of one month's pay shall be accounted and deemed a forfeiture of the whole wages contracted for; and if such time shall not exceed two days the forfeiture of two days' pay shall be accounted and deemed a forfeiture of the whole wages contracted for.

Agreements not liable to Stamp Duties. This Act not to extend to Vessels under 100 Tons Burthen, nor to debar Seamen from entering into his Majesty's Service.

X. Provided always and it is hereby enacted, That no agreement or agreements to be made by virtue or under the authority of this Act shall be or be deemed liable to or charged with any stamp duties whatsoever: And provided also, That nothing herein contained shall extend or be construed to extend to any ship or vessel trading coastwise as aforesaid, or to any master or commander seaman or mariners belonging thereto, unless such ship or vessel shall be of the burthen of one hundred tons or upwards and shall go to open sea: And provided also, That nothing in this Act contained shall extend or be construed to extend to debar any seaman or mariner belonging to any such ship or vessel from entering or being entered into the service of his Majesty his heirs or successors on board any of his or their ships or vessels, nor shall such seaman or mariner for such entry forfeit the wages due to him during the term of his service in such ship or vessel, nor shall such entry be deemed a desertion.

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34. [No. XX.] 34 George III. c. 68.—An Act for the further Encouragement of *British* Mariners; and for other Purposes therein mentioned.—[11*th June* 1794.]

34 Geo. III. c. 68.

I. [12 *Car.* II. cap. 18. recited. After six months from the conclusion of the present war no goods, &c. to be imported into *Great Britain*, &c.]

II. [Nor any goods exported from thence in *British* vessels, unless the master and three-fourths of the crew are *British* subjects.]

III. [Nor any such vessels registered in *Great Britain*, &c. to be otherwise navigated but as herein provided.]

IV. [No goods to be carried from one place to another in *Great Britain*, &c. nor any vessel to sail in ballast nor to fish on the coasts, unless wholly manned with *British* subjects. Commissioners of the customs

may authorise vessels to have foreign mariners to instruct *British* ones in fishing.]

V. [Proportions of *British* mariners to be so the whole voyage, unless in case of sickness death desertion or of the whole or part of the crew being taken prisoners in the voyage, and in such case the master or other person having the charge or command of such ship or vessel shall specify the same in his report. Act not to alter any regulations for which special provision has been made]

Who shall be deemed British Seamen.

VI. 'And to prevent all doubts respecting the various terms made use 'of in several laws of navigation with respect to who are to be deemed 'and taken to be qualified to be masters of *British* ships or to be *British* 'sailors seamen or mariners;' Be it declared and enacted, That no person shall from henceforth be deemed and taken to be qualified to be the master of a *British* ship or to be a *British* sailor seaman or mariner within the intent and meaning of this Act or of any other Act now in force, except the natural-born subjects of his Majesty his heirs and successors, or persons naturalized by or by virtue of any Act of Parliament or made denizens by letters of denization, or except persons who have become his Majesty's subjects by virtue of conquest or cession of some newly-acquired country, and who shall have taken the oath of allegiance to his Majesty or the oath of fidelity required by the treaty or capitulation by which such newly-acquired country came into his Majesty's possession, except as is hereinafter provided.

VII. [Foreign seamen serving three years in the navy in time of war may be employed as masters or *British* seamen on certificate of their service, &c.]

No Person who has taken an Oath of Allegiance to any Foreign State, except in certain Cases, to be qualified to be a Master or a British Seaman.

VIII. Provided always and be it enacted, That no person who is or shall become qualified to be the master of a *British* ship or vessel or to be a *British* sailor seaman or mariner by birth naturalization denization conquest or service in manner herein-before mentioned, and who has taken or shall take any oath of allegiance to any foreign sovereign or state whatsoever for any purpose whatsoever, except under the terms of some capitulation upon the conquest of any of the dominions of his Majesty his heirs or successors, by any enemy or enemies and for the purpose of obtaining the benefit of such capitulation only, shall be deemed and taken to be qualified to be the master of a *British* ship or vessel or a *British* sailor seaman or mariner within the intent and meaning of any of the laws of navigation, unless such person shall have taken such oath of allegiance before he became so qualified; and any person who shall after having become disqualified by taking such oath of allegiance as aforesaid take the charge or command of any *British* ship or vessel as master or commander thereof, shall for every such offence forfeit and pay the sum of one hundred pounds; and every person who shall after having become so disqualified as aforesaid engage to serve as a *British* sailor seaman or mariner on board any such ship or vessel shall forfeit and pay for every such offence the sum of ten pounds; such forfeitures respectively to be recovered upon conviction before a justice of the peace, if such offence shall be committed in *Great Britain;* and before any member of the supreme court of justice or any justice of the peace, if such offence shall be committed in the islands of *Guernsey Jersey* or *Man* or in any colony plantation island or territory to his Majesty belonging in *America.*

Penalty on disqualified Persons acting.

IX. [Act not to affect any proclamation under 13 *Geo.* II. c. 3.]

X. [Goods imported, &c. contrary to this Act to be forfeited with the vessels, &c.]

By whom Goods, &c. forfeited may be seized, and how Forfeitures may be sued for and how applied.

XI. And be it further enacted by the authority aforesaid, That all and every the goods wares or merchandize and all ships or vessels forfeited by this Act may and shall be seized by the commander or commanders of any of his Majesty's ships of war, or any commissioned warrant or petty officer specially appointed by him or them, or by any officer or officers of his Majesty's customs; and that every forfeiture incurred by this Act and whereof the recovery is not specially provided for by this Act may and shall respectively be sued for prosecuted and recovered in such courts

No. XX. 34 Geo. III. c. 68.

and by such and the like ways means and methods, and the produce thereof respectively disposed of and applied in such and the like manner and to such and the like uses and purposes as any forfeiture incurred by any law respecting the revenue of customs may now be sued for prosecuted or recovered disposed of and applied either in this kingdom or in the islands of *Jersey Guernsey Alderney Sark* or *Man*, or in any of his Majesty's other dominions in or out of *Europe* respectively as the case may happen to be.

XII. [On production of certificates of the necessity of engaging foreign mariners no vessel to be detained, but the persons authorised to make seizures to indorse the certificate for the consideration of the commissioners of customs.]

XIII. [Notification in the *Gazette* to be deemed the conclusion of the war.]

XIV. 'And whereas by an Act, passed in the twenty-sixth year of his 'Majesty's reign, intituled *An Act for the further Increase and Encouragement of Shipping and Navigation*, it is amongst other things enacted, 'That when and so often as the property in any ship or vessel belonging 'to any of his Majesty's subjects shall be transferred to any other or 'others of his Majesty's subjects in whole or in part, the certificate of 'the registry of such ship or vessel shall be truly and accurately recited 'in words at length in the bill or other instrument of sale thereof, and 'that otherwise such bill of sale shall be utterly null and void to all intents and purposes: And whereas doubts have arisen whether by the 'said provision, every transfer of property in any ship or vessel is required to be made by some bill or other instrument in writing, and whether contracts or agreements for the transfer of such property may not 'be made without any instrument in writing;' Be it enacted, That no transfer contract or agreement for transfer of property in any ship or vessel made or intended to be made after the first day of *January* one thousand seven hundred and ninety-five shall be valid or effectual for any purpose whatsoever either in law or in equity, unless such transfer or contract or agreement for transfer of property in such ship or vessel shall be made by bill of sale or instrument in writing containing such recital as prescribed by the said recited Act. (1.)

26 Geo. 3. c. 60. recited and

after Jan. 1. 1795, no Transfer of Property in any Vessel to be valid, unless made agreeably thereto.

(1.) Previous to the Statute 26 Geo. III. a registry of ships was only necessary by Stat. 7 and 8 William III. c. 22. with respect to such as were employed in the plantation trade, and by a rule of the Admiralty not to issue a Mediterranean pass to a ship that had not a register. See the inquiries preparatory to the introduction of the Act—Reeves, S. and N. p. 111. c. 6. The Statute 26 Geo. III. and the present Act have the credit of being founded upon very sound policy, and of having been attended with very beneficial effects in the attainment of their professed object; but certainly, like most other Acts which render the validity of contracts dependent upon a series of complicated regulations, they have been productive of several cases of very considerable hardship (arising in a great measure from the obscurity of their construction) as affecting the interest of individuals.

In Mc. Neal's case, Reeves S. and N. Lord Camden said, that the Statute 26 Geo. III. was an Act which, in every view of it, should be considered as a remedial Act, and that therefore the rule of construction in applying and explaining it should be such as would most aid in advancing the means of relief and the suppression of fraud; and should it be considered in any light as a penal law, he was clearly of opinion, that every thing arising from such a consideration should be controuled by the other character of it as a remedial Act. But in Hubbard *v.* Johnstone, 3 Taunt. 220. Mr. Justice Heath observed, with reference to 34 Geo. III. "that although the Statute be remedial yet it is very penal, if all its requisites be not complied with. First, it annuls the contract, and leaves the purchaser to seek relief from, perhaps, fraudulent and insolvent vendor. In cases of bankruptcy or insolvency it occasions a certain loss. These Statutes are made for the benefit of trade and commerce, and to regulate the conduct of merchants. If laws of this sort be not perfectly clear and intelligible to persons of their description, the legislature, by the use of such ambiguous clauses, would lay a snare for the subject. A construction which conveys such an imputation ought never to be adopted. I think (he said) that the same rule ought to obtain here as in the construction of clauses inflicting pains and penalties in the revenue laws; if they be ambiguously and obscurely worded, the interpretation is ever in favour of the subject, for this plain reason, that the legislature is ever at hand to explain its own meaning, and to express more clearly what has been obscurely expressed; and, therefore, if the supposed consequences were to follow, [alluding to consequences suggested in argument,] which I by no means allow, I should lean against the forfeiture, and leave it to the legislature to correct the evil, if it be one." Surely this view of the subject is more conformable to the principles of

On Alteration of Property in Vessels in the Port to which they belong, after Jan. 1, 1795, the Indorsement to be made in a certain Form, &c.

XV. 'And whereas by the laws now in force upon any alteration of 'property in any ship or vessel in the same port to which such ship or 'vessel belongs, an indorsement upon the certificate of registry is re-'quired to be made:' Be it enacted, That such indorsement shall from and after the first day of *January* one thousand seven hundred and ninety-five be made in the manner and form hereinafter expressed, and shall be signed by the person or persons transferring the property of the said ship or vessel by sale or contract or agreement for sale thereof, or by some person legally authorized for that purpose by him her or

justice than that which, in cases of doubt, would incline to subject to the very severe consequences of this system of law (be the policy of it in favour of certain monopolies ever so manifest) acts and omissions that could only be brought within its operation by a construction which no ordinary prudence could anticipate.

In Mestaer *v.* Gillespie, 11 Vesey, 621. the Master of the Rolls observed, that it might be said, the legislature, having proposed the object, proposed the only means by which that object was to be secured, judging of the propriety of enforcing that object, and, by such means, embracing that object and prescribing those means, whatever inconvenience might result to private individuals. The harshness, therefore, in particular instances, is not to be taken into consideration, the object not being to provide for the interests of parties as against each other; but *at all events*, to obtain that great object of public policy to which *it might be thought right* to *sacrifice individual* convenience and *justice according to ordinary rules*.

In most of the cases upon the Act, the policy of it is dwelled upon in the highest strains of commendation; with regard to which topic of argument it has always appeared to me, that a court of justice is not exactly the place for discussing questions of policy with the greatest propriety or advantage; but that every Act, which has the sanction of the legislature, should equally be carried into execution and effect, according to its apparent intent and the established rules of legal construction, without either extending or contracting its operations upon any collateral views of its utility or inconvenience.

But it is a very material question for legislative consideration, whether all the objects of a public nature, which it is thought material to provide for, may not be sufficiently attained without its being necessary as a means for the accomplishment of that end to require a sacrifice of *individual justice according to ordinary rules*, or, in other words, according to those great and immutable principles, the support of which is the main purpose and most essential benefit of civil society.

I apprehend it may be taken for granted, that if all those circumstances of notoriety, as to the built, repairs, and property of a ship, which the object and purpose of this system of Law require, are sufficiently provided for, it will not be deemed of any service to superadd, that the provisions should be dispersed, complicated, obscure, or more inconvenient than may be conducive to the primary object, and that in this as well as every other subject of legislation, as much security should be given to fairness and integrity, and as much care be taken to prevent the rendering mere inadvertence or unskilfulness liable to the consequences properly attached to intentional fraud, as may be consistent with the general policy which the system of regulations is intended to promote.

The most beneficial course for this purpose would apparently be to repeal the several Laws respecting the built, property, transfer and navigation of ships, and to frame one general Act incorporating the several provisions upon the subject, and such others as may be suggested, either by official experience or judicial determinations, according to a systematic arrangement, and in plain and perspicuous language. This purpose would be facilitated by departing from the usual verbosity of Acts of Parliament, and enacting (according to the plan recently adopted in several instances upon matters of revenue) that the several rules contained in the Act should in future be followed with respect to the matters therein mentioned. These rules might be divided into several classes, as applicable to the different branches of the subject, for which arrangement considerable assistance might be derived from the summary of the existing law in the work of Mr Reeves.

As a further matter of regulation it may be proper to establish, that after the principal act of sale has been executed by the party interested, the subsequent acts should be performed by public officers, and that for this purpose the certificate of registry should, at the end of each voyage, be placed in the hands of such officers, so that a title otherwise good may not be defeated by the fraud or obstinacy of the vendor or master. Perhaps it might not be ineligible to provide that there should be two certificates, the one to be kept with the ship as at present, and the other to be retained on shore for the purposes of transfer, and that some distinction by printing in a different coloured ink, or otherwise, should be adopted to prevent the substitution of the one for the other. As all transfers of property require some inchoate proceedings, I think that no inconvenience could arise from empowering Courts of Equity, within a limited period, to enforce contracts of sale of ships as well as of other property; that it would be expedient to establish separate regulations for the pledge of ships or shares of ships; and that it would be peculiarly beneficial to enable the Court of Admiralty, or some other proper tribunal, to take cognizance in a summary manner, with respect to the immediate possession and employment of ships in cases of disputed title.

No. XX. 34 Geo. III. c. 68.

them, and a copy of such indorsement shall be delivered to the person or persons authorised to make registry and grant certificates of registry, otherwise such sale or contract or agreement for the sale thereof shall be utterly null and void to all intents and purposes whatsoever; and such person or persons so authorised to make registry and grant certificates of

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In proceeding to the points which have been determined on the operation of these Acts, exclusively of cases which are mentioned in the notes to the sections to the particular consideration of which they more immediately relate, it is proper to premise, that in Long *v.* Duff, 2 B. and P. 209. it was held, that foreign ships, British owned, are not required to be registered.

The first case decided upon the construction of 26 Geo. III. c. 60. was Rolleston *v.* Hibbert, 3 T. R. 406. in which it was ruled, that an action of trover might be maintained against the defendant, to whom a ship had been transferred by absolute bill of sale, not made according to the provisions of the Act, but intended only as a security, and that the defendant had not any lien against the assignees of the person giving the bill of sale, and who had become bankrupt, (but nothing turned upon the bankruptcy.) Lord Kenyon said, it was not necessary that the property in a ship should pass by a written instrument, but if the parties chose to convey by a written instrument, they should not be permitted afterwards to refer to any other agreement. The opinion so expressed was the occasion of the provision in the text, that no transfer should be valid except by bill of sale, as prescribed by 26 Geo. III. In Wilson *v.* Hather, 5 Taunt. 642. a broker employed to sell a vessel advanced money upon her, and took an absolute bill of sale in proper form, undertaking to account for the difference if she produced more; but no copy of the indorsement of the certificate of registry was delivered to the proper officer, and other provisions of the Act were not complied with; and it was ruled, that the defendant had not any lien. Gibbs, C. J. said, "The right of lien does not arise out of any contract whatever, but out of a right to hold property till the party claiming the lien has been paid for the operation he performs." In the preceding case of Mestaer *v.* Atkins, 5 Taunt. 381. 1 Marshall, 76. it was held, that a broker employed to sell a ship had a lien on the papers put into his hands for the purpose, as all the cases on the Acts had been cases of transfer, where the ship might have been registered in performance of the contract, but that the defendant in the particular case could never have sent the ship to sea. Heath, J. observed, that his custody of the papers gave him no power over the ship.

In Rolleston *v.* Hibbert, Buller, J. expressed an opinion, that transfers by operation of law were excepted; and it was expressly decided, in Bloxam *v.* Hubbard, 5 East. 407. that the Register Acts do not apply to the assignment from the commissioners to the assignees of a bankrupt. In Reid *v.* Darby, 10 East. 143. it was ruled, that Vice Admiralty Courts abroad had no power to decree the sale of a ship found not sea worthy; but supposing there was such power, as the vessel was subsisting as such, and capable of being used for the purposes of navigation, the forms of the Register Acts must be complied with.

In Rolleston *v.* Smith 4 T. R. 161. the certificate of registry of a prize ship contained the words "*as by sentence of condemnation dated 28th May* 1783, *and made free as by certificate granted 28th January* 1783, *appears, &c.*" The real date of condemnation was the 28th of May 1782, and was so inserted in the certificate which was with the vessel at sea, and in the collectors comptrollers and secretary's books—but in the register general's office from which the bill of sale was filled up it was stated to be the 28th May, 1783, and the mistake was held not to vitiate the sale. Lord Kenyon said "There is one material circumstance to attend to, namely, the date of the certificate of freedom, which was in January, 1783; now by comparing that date with the supposed date of condemnation in May, 1783, it is impossible that the latter could be correct, inasmuch as the certificate of freedom would then bear date prior to the condemnation. It is apparent therefore on the face of the instrument itself that some error must have crept into this copy of the certificate of the registry which was inserted in the bill of sale. Now it is impossible to conceive that the framers of this Act intended to prevent the sales of ships at sea, but the statute requires that the certificate of registry shall be always on board the ship and that abstracts of it should be entered at several offices of which the registrar general's is one. And it is stated in the case that the parties to this bill of sale applied to that office for a copy of the certificate entered in the public books there, which they inserted in the bill of sale, *verbatim et literatim*, as it is there entered. They could not have recourse to the original certificate, for that was necessarily on board the ship then at sea; they went to that which was supposed to be the most authentic depository of the certificate, and I do not see what other step they could have taken to comply with the requisites of the statutes—therefore we are of opinion that the bill of sale is valid notwithstanding this mistake. But even supposing that the parties had had an opportunity of seeing the original certificate, it is too much to say that a mere clerical mistake should render it null and void. It is sufficiently ascertained in this bill of sale, that this is the same ship; the only variance between the copy and the original is in the figure 3 instead of 2, which appears, even on the face of the bill of sale itself, to be necessarily a mistake. For these reasons therefore, and with a laudable inclination to support a fair and honest transaction, *ut res magis valeat quam pereat*, at the same time not transgressing the rules of law, we are of opinion that this bill of sale was sufficiently valid." The marginal abstract of the case, which is copied into several treatises, imports generally that a mere clerical mistake will not vitiate the bill of sale; I have therefore

registry, are hereby required to cause an entry thereof to be indorsed on the oath or affidavit upon which the original certificate of registry of such ship or vessel was obtained, and shall also make a memorandum of the same in the book of registry, and shall forthwith give notice thereof to the commissioners of his Majesty's customs in *England* and *Scotland* under whom they respectively act.

No. XX.
34 Geo. III.
c. 68.

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thought it requisite to insert the circumstances of the case and the reasons given for the judgment at length. It certainly would have been as between the parties a case of extreme hardship to have held the transaction void; but how many of the cases upon these Acts (necessary as they may be) are not cases of hardship? And adverting to the strong imperative words of the 26th Geo. III. can it be with any correctness said that a bill of sale, alleging the certificate to state condemnation in 1783, was a true recital of a certificate stating a condemnation in 1782? It would be manifest that there was some error, but no accurate information would be given as to the truth of which that error had taken the place. In the preceding case it was objected that the bill of sale did not state the name of the officers signing the certificate—but no notice was taken of this objection by the Court.

See several instances of inaccuracy which were deemed fatal in Westerdell *v.* Dale, 7 T. R. 306. (principally determined on another point) on account of which the instrument was held invalid. The report does not particularly specify whether all or which of the inaccuracies pointed out were deemed fatal; and it was sufficient for the purpose of the cause if any of them were so. I have a personal recollection that the objections principally by Lord Kenyon, were these of the bill of sale stating the registry to be made upon oath, whereas by the certificate it appeared to have been upon affirmation; and that figures were used in the recital instead of words at length as required by the Act, although in fact figures were used in the same places in the original certificate.

In Heath *v.* Hubbard, 4 E. 110. it was ruled that a bill of sale in trust for the underwriters on a certain policy, without naming them, in proportion to their respective payments, supposing it to be void, was at most void only as to the objects of the trust, and so that the execution of the trust could not be enforced at law, but that there was not any such illegality affecting the trustee himself as would prevent the property vesting in him in the first instance.

In Underwood *v.* Miller & Fatkin, 1 Taunt. 387. it appeared that Miller & Fatkin were registered as sole owners. By a subsequent transfer Fatkin assigned one-fourth to Miller, not calling it all his interest. In fact Fatkin never possessed more than one-fourth. The action being against the two for salvage, it was held that it was not necessary that the bill of sale should state the one-fourth to be the whole of Fatkin's interest. The question seems to have turned upon the form prescribed in 34 Geo. III. § 15. as noticed in the note to that section; but the report is rather indistinct. In the marginal abstract it is said that the omission of the officer at the outport to transmit a copy of the indorsement to London does not invalidate the transfer. This point was mentioned in the argument, but no notice is taken of it in the judgment; and in using Mr. Taunton's Reports too much reliance should not be placed on the marginal abstracts. It was however held in Heath *v.* Hubbard, 4 E. 110. that the acts required to be done by the public officers are only directory, and do not affect the sale—and the plaintiff's title being supported upon that ground, it was contended, that the defendant, being tenant in common, no action of trover could be maintained—but it appearing that a copy of the bill of sale to the defendant had not been delivered to the proper officer, which was an omission of the party himself, the sale to him was on that account held to be void. A subsequent decision in Hubbard *v.* Johnstone, 3 Taunt. 177. that the delivery of such copy was not necessary under the circumstances, does not affect the general principle, that the omission of facts required to be done by the parties renders the transaction void.

In Moss *v.* Charnock, 2 E. 399. a bill of sale was executed as a security for a debt; a correspondence took place as to the goodness of such security and the compliance with the forms of the Registry Act. On the 15th of November the defendant consented to accept of the assignment—on the 19th the assignor committed an act of bankruptcy. The requisites necessary for the transfer of a ship at sea were complied with on the 5th of December; and it was ruled that no title passed. On the part of the defendant it was contended, that as the requisites of the statutes were complied with within a reasonable time, that would by relation make the title complete from the 15th of November. Lawrence, J. in delivering the opinion of the Court, said, that the proper course of decision would be by construing the statute as enacting that no bill of sale should have any operation or effect until the requisites imposed upon the parties were complied with, and by not allowing any relation to hold good so as to make the conveyance effectual from any antecedent time. Wood, Baron, in the case of Hubbard *v.* Johnstone, in the Exchequer Chamber, 3 Taunt. 177. said that he could not agree with this doctrine: he thought the property passed instantly by the bill of sale, and that the subsequent acts to be done were not necessary to transfer the property, but that the grant was defeasible by subsequent omissions where it was so expressly provided, but not otherwise. If it were not so, he observed, that though in the case of a ship at sea the statute gives ten days after her return for the doing of certain acts; yet, if an act of bankruptcy happened within the ten days, and before such acts were done, the sale would have no effect. The judgment in this case was in favour of the transfer; but the decision of that question was not necessary to the determination. Some doubt

No. XX.

Form of Indorsement on Change of Property.

34 Geo. III. c. 68.

"BE it Remembered, That [I *or* we] [*names, residences, and occupation of the persons selling*] have this day sold and transferred all (2.) [my *or* our] right, share, or interest in and to the ship or vessel [*name of the ship or vessel*] mentioned in the within certificate of registry, unto [*names, residence, and occupation of the purchasers.*] Witness [my *or* our hand *or* hands] this [*date in words at full length.*]

"Signed in the presence of

"[*Two Witnesses.*"]

If Vessels be absent from the Port to which they belong, when Alteration in the Property shall be made, the Sale shall still be made as before directed, &c.

XVI. Provided always, That if any ship or vessel shall be at sea or

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also was expressed by the Lord Chancellor, in Mestaer *v.* Gillespie, as to the generality of the propositions stated in Moss *v.* Charnock, and it was ruled in Palmer *v.* Moxon, 2 M. and S. 43. that it was sufficient that the subsequent acts were done within a reasonable time. In that case the bill of sale was executed by three out of four owners on the 10th of June, a *fieri facias* against one of the parties so executing delivered to the sheriff on the 11th a copy of the memorandum indorsed on the certificate delivered to the proper officer on the same day at a later hour, the bill of sale executed by the other owner and another copy of the memorandum left with the proper officer on the 15th, and the question being as to the sale thereof being complete before the delivery of the writ, the Court held, that Moss and Charnock was rightly decided, as there was an unreasonable delay between the 23d of November and the 5th of December, but that the expressions used in that case had gone further than what was necessary or warranted by the law.

The courts of equity have considered themselves bound to apply the provisions of the Registry Acts with the same degree of strictness as courts of law, and very properly so, as the adopting a different rule would in effect have been assuming a judicial authority to dispense with the mandates of the legislature. Therefore, in Hibbert *v.* Rolleston, 3 Bro. c. 571. the defendant at law, in the above-mentioned case of Rolleston *v.* Hibbert, filed a bill to be relieved from the defect in the transfer; but the bill was, upon consideration, dismissed. In Curtis *v.* Perry, 6 Vesey, 639. ships bought with the funds, and on the account of the partnership of Chiswell and Nantes, were registered in the separate name of Nantes—Chiswell died, and immediately afterwards Nantes was made a bankrupt; and it being insisted, that the ships should be considered as joint property, under the provisions of stat. 21 James 1. respecting reputed ownership, the Lord Chancellor held, that they must be applied as the separate property of Nantes, desiring it to be understood, that he gave no opinion whatever upon the effect of the Act of Parliament, in cases of trusts implied by law, and not arising out of an Act in which the contracting parties join. He observed, that it was unnecessary to say any thing upon that, further than that in a great variety of cases the interests of mankind would require the Court to consider long before they should say those statutes would prevent trusts arising or implied by operation of law.

In Mestaer *v.* Gillespie, 11 Vesey, 621. the question arose upon an interlocutory motion, whether the assignees of a ship could have relief in equity against the invalidity of the transfer, for want of indorsement on the certificate of registry within ten days, such indorsement having been prevented by the fraud of the assignor. An issue was directed as to the fact, and a compromise afterwards took place. The principles applicable to the subject were very fully discussed by the Lord Chancellor and the Master of the Rolls, and the question was regarded as one of considerable doubt and difficulty. It is also stated, as matter of doubt, whether the assignment being of ship and freight, although void as to the ship might not be valid as to the freight.

In Spelitt *v.* Lechmere, 13 Vesey, 588. the Lord Chancellor decreed an account against one of two part owners to whom the other had assigned his share, the directions as to indorsement within ten days after the arrival of the ship not having been complied with. The question argued was, whether the acts apply to a sale by one partner to another, (of which there does not appear any ground for doubt upon the face of the acts themselves,) no fraud being imputed. In a subsequent case of Barber *v.* Chapman, cited 1 Maddock, 44. where there was gross fraud, by preventing the certificate being indorsed within the limited time, the Master of the Rolls, with much reluctance, and after a year's delay of his judgment, in hopes that the parties would agree to a compromise, declared that he could not relieve; and, finally, in Thompson *v.* Leech, 1 Mad. 39. the Vice-Chancellor held that no relief could be given in equity, in the case of a defective title to a ship through fraud or mistake—see also *ex parte* Horston, 1 Rose, C. C. 177. These decisions, as already observed, certainly accord with the positive mandates of the laws, but the hardships resulting from them render it highly important to consider whether the continuance of such hardships is necessary to the objects of public advantages which it was primarily intended to secure—a subject upon which I have in the preceding part of this note more particularly enlarged.

The cases hitherto adduced having related to the direct question of property, it remains to mention such as are collateral and incidental.

No insurance can be made or averred on behalf of persons as owners of a ship, unless they are entitled according to the provisions of the Acts; therefore, when two partners purchased with a

absent from the port to which she belongs at the time when such (3.) alteration in the property thereof shall be made as aforesaid, so that an indorsement or certificate cannot be immediately made, the sale or contract or agreement for the sale thereof shall notwithstanding be made by a bill of sale or other instrument in writing as before directed, and a

regular bill of sale, and afterwards took in two others, but no transfer was made to their joint account, it was ruled that the firm had not any insurable interest in the freight—Camden *v.* Anderson, 5 T. R. 709.

In Westerdell *v.* Dale, 7 T. R. 306. one joint owner of a ship having sold his share to another by a bill of sale, in which there were some inaccuracies in the recital of the certificate of registry, it was held, that the property was not divested out of him, and that he was liable for repairs ordered by the other, who acted as sole owner, and in whose name the plaintiff had made out his invoice. In Jackson *v.* Vernon, 1 H. B. 114. it was ruled, that the defendant, to whom transfer had been made according to the Act, which, upon the face of it, was only a security for a debt, was not liable for stores supplied previous to his taking possession; and the Court expressed themselves clearly of opinion, that a mortgagee out of possession was not answerable for goods furnished for the use of the ship. It had been previously held in Chauncey *v.* Blackburn, (which had no relation to the Register Acts,) that the mortgagee of a ship could not maintain an action for freight previous to taking possession, it being the opinion of the Court that the contract was with the mortgagor. In Westerdell *v.* Dale, there was an assignment to the defendant of the entire ship, by way of mortgage, subsequent to his own assignment of a moiety, and which had the same defects as the first assignment, and one point was as to his liability as mortgagee. The case was decided upon the other ground already mentioned; but Lord Kenyon intimated, that whenever it became necessary to decide that point, it might deserve further consideration. He observed, that the mortgagee, whether in or out of possession, was the legal owner, and must be so considered in a court of law. He said that it had been argued, that there was a difference between a mortgage of real and personal property, but that distinction affords a strong argument against the mortgagee of a ship, for the interest or transfer of the ship is made, though, by way of mortgage, the mortgagee may state that he was possessed, and he had thought it right to throw out that doubt, lest, whenever the question shall arise again, it might be supposed that he had acquiesced in the determination referred to.—Whatever may be the true decision upon that subject, I apprehend that it cannot fairly depend upon any analogy to the doctrine of actions of covenant against assignees of real estate, there certainly being no right of action by or against one person upon a contract entered into by or with another as founded upon privity, and running with the property. With respect to the liability of ship-owners, I think that the general dicta upon that subject should be referred to the common and general case of owners beneficially and immediately in possession, to whom the master or ship's husband is an agent in matters connected with their respective functions; and the liability does not arise from any obligation directly attached to the possession or property of the subject, but from the common obligation of a principal founded upon the acts of the agent within the scope of his authority; and there does not appear to be any adequate reason for attaching the responsibility of a principal to a person who is only interested by way of pledge. The case of Chauncey *v.* Blackburn is a very strong, and, as I conceive, a very satisfactory authority for the opposite doctrine. In *ex parte* Murhell, 1 Rose, P. C. 447. Lord Eldon decided in favour of the liability of the mortgagee, but offered an issue, which was declined. In Arnett *v.* Carstairs, 3 Camp. N. P. 356. Lord Ellenborough ruled, that the master of the ship, employed by A. B. the owner, could not maintain an action against a subsequent mortgagee of a ship (under an instrument duly registered) who had never taken possession. His Lordship said, that there was express privity of contract between the plaintiff and A. B. and the legal ownership of the ship thus became immaterial.

In Young *v.* Brander, 8 E. 10. it was ruled, that the vendor of a ship transferred by register bill of sale, was not liable for repairs ordered by a master appointed by a vendee previous to the delivery of a copy of the bill of sale to the proper officers. Per Lord Ellenborough, "It is true that the requisites of the Act have not been complied with, and that the owners of a ship are liable for repairs ordered for them or for their benefit by *their* master; but it was never heard of, that if a stranger ordered repairs for another's ship, the owner was liable. Here the repairs were ordered by the vendee, who was a mere stranger to the defendant in point of law. In Westerdell *v.* Dale there was a partnership. W. who had ordered the repairs was the same as D. and the case turned on the privity between the two." In Frazer *v.* Marsh, 13 E. 238. it was ruled, that the registered owner was not liable for stores supplied to the master to whom he had chartered the vessel, and *per curiam.* The Register Acts were passed *diverso intuitu*, and as the parties did not stand in the relation of owner and master, the captain was not the defendant's servant, and therefore the latter is not liable for his act. And in M'Iver *v.* Humble, 16 E. 169. the court held, that no action could be sustained against the defendant, who had made a defective transfer of his interest for goods afterwards supplied to the ship on the credit of other persons, although his name appeared in the register as owner, and he had, subsequently to the supply, joined in a transfer of the ship. Le Blanc, J. "It is much to be lamented that the Register Acts, which were passed for other and public purposes, should ever have operated upon the rights of individuals in other respects." Bayley, J.

No. XX. 34 Geo. III. c. 68.

copy of such bill of sale or other instrument in writing, shall be delivered and an entry thereof shall be indorsed on the oath or affidavit, and a memorandum thereof shall be made in the book of registers, and notice of the same shall be given to the commissioners of the customs in the manner herein-before directed; and within ten days after such ship or vessel shall return to the port to which she belongs an indorsement shall be made and signed by the owner or owners or some person legally authorised for that purpose by him her or them, and a copy thereof shall be delivered in manner herein-before mentioned, otherwise such bill of sale or contract or agreement for sale thereof shall be utterly null and void to all intents and purposes whatsoever, and entry thereof shall be indorsed and a memorandum thereof made in the manner hereinbefore directed. (4.)

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* It is said that we must look for this purpose to the registers to see who are the legal owners. The object of the Registry Acts was to inform Government whether the owners were British, and not to inform the tradesmen to whom they should give credit. The cases of Young and Brander, and Frazer and Marsh, both shew that a person may be deceived as to the true owner by merely looking at the registers, and that, therefore, before credit is given, it is proper for the tradesmen to inquire further.—These latter cases seem to go a great way in overruling the decision in Westerdell *v.* Dale; for it will be very difficult to support that case upon the mere distinction of a partnership as suggested by Lord Ellenborough in Young and Brander, it being wholly foreign to the intention of the parties that there should be any actual partnership at the time of the supply, and the question agitated was as to the general liability of the defendant, and not as supposed in Young and Brander on the want of a plea in abatement of the joint liability of the other party, who was supposed and intended to be sole owner at the time of the contract with the plaintiff.

According to the peculiar nature of this species of property, I think it would be very desirable to make an express provision for a distinct mode of registry in case of transfer by way of security, and for defining the interests, powers, and obligations of the mortgagees. The policy of the Navigation Acts would probably require the mortgagee to have the same qualifications as are necessary in the case of an owner, with the exception of general trusts for the benefit of creditors or underwriters.

In Fraser *v.* Hopkins, 2 Taunt. 5—Tinkler *v.* Walpole, 14 E. 226. it was ruled, that the entry in the registers is not even sufficient *primâ facie* evidence to charge a party as owner, unless shewn to be made by his authority. It is not sufficient evidence of ownership to support an averment of interest on a policy of insurance, Pirie *v.* Anderson, 4 Taunt. 652.

Although a bill of sale by way of mortgage is void, so far as regards the property of the ship, for want of compliance with the register; it is valid as to the personal covenants for payment of the money lent—Kerrison *v.* Cole, 8 E. 231.

It was by accident omitted to insert a note upon Sec. 8. 26 Geo. III. c. 60. of the case of the Eleanor, 1 Edw. Adm. Rep. 135. in which it was held by Sir Wm. Scott, that no person is entitled to the exclusive benefit who has not his usual residence in Great Britain, or in the dominions belonging to the Crown. If he goes into another country, and there has a more usual residence than in this, he is no longer entitled to the same privilege. A person who is continually shifting his residence, so as not to have what under any extension can be deemed an usual residence here, does not come within the description of the statute. He must be, unless in the cases which are specified, usually resident in this country.

(2.) As to the sale of a partial interest, see Underwood *v.* Miller, 1 Taunt. 387.

(3.) This section refers to the preceding, and relates only to an alteration in the same port; and, therefore, in case of a transfer of a ship at sea to a person residing in another port it is not necessary for the ship to return to her former port, in order to have the memorandum indorsed on the certificate of registration, or for the purchaser to send a copy of the bill of sale to the former port, or to indorse a memorandum of the transfer on the certificate within ten days after the ship returns to England. The proper course in such case is to obtain a registration *de novo*, pursuant to Statute 7 and 8 W. 3. c. 22. s. 21. Ruled in the Exchequer Chamber, Hubbard *v.* Johnstone, 3 Taunt. 177. contrary to what had been held in another case relating to the same transaction in Bloxam *v.* Hubbard, 5 E. 407. The case of Ruyter *v.* Jackson, 8 E. 511. in which it was held that the transfer of a ship belonging to Sunderland to a purchaser in London, the ship at the time being in the Port of London, was void for want of compliance with the requisites of this or the preceding section, seems to be also overruled by the decision in Hubbard *v.* Johnstone.

(4.) The Court intimated their decided opinion, that the 16th Section related as well to the transfer of the entire property as of a share or shares in a ship. Hubbard *v.* Johnstone, 3 Taunt. 190.

Where a ship registered at the port of N. was transferred by a deed of assignment to owners resident in L., the ship being then in the port of L.: held, that this transfer was not within 34 Geo. 3. c. 68. s. 15. but within s. 16. of that Act: and that the transfer was valid, although no indorsement was made on the certificate of registry: held, also, that the non-compliance with 7 and 8 Will. 3. c. 22. s. 21. does not avoid the transfer. Hodgson *v.* Brown, 2 B. & A. 427.

XVII. Provided also and be it enacted, That in all cases where the owner or owners of any ship or vessel shall reside in any country not under the dominion of his Majesty his heirs and successors as member or members of some *British* factory, or agent or agents for or partner or partners in any house or co-partnership actually carrying on trade in *Great Britain* or *Ireland* at the time when he she or they shall transfer such property in any ship or vessel, so that an indorsement cannot be made immediately, nor a copy of such bill of sale or other instrument in writing be delivered, nor an entry thereof indorsed on the oath or affidavit, nor a memorandum thereof made in the book of registers, nor notice of the same given to the commissioners of the customs in the manner before-mentioned, the same may be done at any time within six months after such transfer shall have been made, and that within ten days after such owner or owners or some person legally authorised for that purpose by him her or them shall arrive in this kingdom, if such ship or vessel shall then be in any port of this kingdom, and if not then within ten days after such ship or vessel shall so arrive, an indorsement shall be made by the owner or owners or some person legally authorised for that purpose by him her or them, and a copy thereof shall be delivered in manner herein-before mentioned, otherwise such bill of sale or contract or agreement for sale thereof shall be utterly null and void to all intents and purposes whatsoever, and entry thereof shall be indorsed and a memorandum thereof made in the manner herein-before directed.

Regulations for Transfer of Property where Owners reside in any Country not under the Dominion of his Majesty.

XVIII. 'And whereas by an Act passed in the twenty-eighth year of 28 Geo. 3. c. 34.
'the reign of his present Majesty, intituled *An Act more effectually to se-*
'*cure the Performance of Quarantine, and for amending several Laws re-*
'*lating to the Revenue of Customs*, certain provisions were amongst other
'things made to prevent the masters of ships or vessels from wilfully and
'maliciously detaining and refusing to deliver up the certificates of ships'
'registry to the prejudice of the owners of such ships or vessels: And
'whereas the good purposes intended by those provisions have not been
'effected; and it is therefore expedient to make further provisions for
'preventing the masters of ships or vessels from withholding certificates
'of registry to the prejudice of the owners of such ships or vessels:' Be it therefore enacted by the authority aforesaid, That in case the master of any ship or vessel who shall have received the certificate of the registry thereof, (whether such master shall be a part owner or not) shall wilfully detain and refuse to deliver up the same to the proper officers (5.) empowered to make registry and grant a certificate thereof on the owner or owners or the major part of the owners of such ship or vessel if such master has not any property therein, or on the other owner or owners or the major part of the other owners of such ship or vessel if such master hath any share or property therein, requiring him so to do, it may and shall be lawful to and for the owner or owners or the major part of the owners of such ship or vessel, the certificate of registry of which shall be detained and refused to be delivered up as aforesaid, to make complaint on oath against the master of the ship or vessel who shall so detain and refuse to deliver up the same, of such detainer and refusal to any justice of the peace residing near to the place where such detainer and refusal shall be in *Great Britain* or to any member of the supreme court of justice, or any justice of the peace in the islands of *Jersey Guernsey* or *Man*, or in any colony plantation island or territory to his Majesty belonging in *America* or the *West Indies*, where such detainer and refusal shall be in any of the places last-mentioned, and on such complaint the said justice or other magistrate shall and is hereby required by warrant under his hand and seal to cause such master to be brought before him, to be examined touching such detainer and refusal; and if it shall appear to the said justice or other magistrate on examination of the master or otherwise that the said certificate of registry is not lost or mislaid but is wilfully detained by the said master, such master shall be thereof con-

Mode of Proceedings when Masters withhold Certificates of Registers.

Penalty for withholding Certificates.

(5.) The Master cannot be convicted in this Penalty for refusing to deliver the Certificate to the sole owner for the purpose of providing the necessary indorsement, R. *v.* Prixley, 13 E. 91.

No. XX. 34 Geo. III. c. 68.

victed and shall forfeit and pay the sum of one hundred pounds, and on failure of payment thereof he shall be committed to the common gaol, there to remain without bail or mainprize for such time as the said justice or other magistrate shall in his discretion deem proper, not being less than six months nor more than twelve months.

Justices to certify Detainer of Certificates, on which Registry may be made de novo.

XIX. And be it further enacted, That the said justice or other magistrate shall and he is hereby required to certify the aforesaid detainer refusal and conviction (6) to the person or persons who granted such certificate of registry for such ship or vessel, who shall on the terms and conditions of law being complied with make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered *de novo*.

Where Property is transferred, no Vessel to be registered de novo by the Registrar, unless Instrument of Sale be produced;

XX. 'And whereas it is expedient that the officers empowered to make 'registry of ships and vessels and to grant certificates thereof in case 'any such ship or vessel is required to be registered *de novo*, should be 'authorised to require the production of every bill or other instrument 'of sale by which the property in any ship or vessel is transferred;' Be it therefore enacted by the authority aforesaid, That when and so often as the property in any ship or vessel belonging to any of his Majesty's subjects shall by sale be transferred in whole or in part to any other or others of his Majesty's subjects, and such ship or vessel shall be required to be registered *de novo*, it shall and may be lawful to and for all and every the officer and officers empowered to make registry of ships and vessels and to grant certificates thereof to require and he and they are hereby authorised and directed to require the bill or other instrument of sale thereof to be produced to him or them (7.); and in case such bill or other instrument of sale shall be so required to be produced, and the same shall not be produced to such officer or officers, the said officer or officers shall not make a registry nor grant a certificate of registry *de novo* for any such ship or vessel: Provided always, That it shall and may be lawful for the commissioners of his Majesty's customs in *England* or any four or more of them, and the commissioners of his Majesty's customs in *Scotland* or any three or more of them respectively, if application shall be made to the said commissioners of the customs in *England* and *Scotland* respectively, and for the governor lieutenant-governor or commander in chief for the time being of the islands of *Guernsey* or *Jersey*, or of any colony plantation island or territory to his Majesty belonging, if such application shall be made to any of them respectively, upon due consideration of the particular circumstances of the case to give direction for registering such ship or vessel *de novo*, and granting a certificate of such registry notwithstanding such bill or other instrument of sale shall not have been produced as aforesaid, and such registry shall be made and such certificate thereof shall be granted accordingly: Provided always, That all the other regulations required by the laws in force concerning the registry *de novo* of ships and vessels be complied with.

but the Commissioners of the Customs, &c. may give Directions for the Registry.

7 & 8 Gul. 3. c. 22.

XXI. 'And whereas by an Act passed in the seventh and eighth years of 'the reign of his late Majesty King *William* the Third, intituled *An Act 'for preventing Frauds and regulating Abuses in the Plantation Trade*, it is 'amongst other things enacted, That in case there be any alteration of 'property in the same port by the sale of one or more shares in any ship 'after registering thereof, such sale shall always be acknowledged by 'indorsement on the certificate of the register before two witnesses, in 'order to prove that the entire property in such ship remains to some of

(6.) This is certainly a very defective provision, making the legal title of the purchaser depend upon the conviction of the Master before a Justice of Peace of a wilful detention; whereas the detention may appear to be *bona fide* upon an application of the former owner objecting to the validity of the sale, a case which I have known occur in fact. The more proper course would be to compel the Master to deliver the Certificate to the proper officer at all events, and for a memorandum of the transfer to be made by such officer, without prejudice to any dispute with respect to its validity.

(7.) The Officers are not bound to register upon a transfer by the surviving Partners without the concurrence of the Executors of the deceased. Rolleston of Liverpool, 2 M. & S. 223.

'the subjects of *England*: And whereas it is expedient to authorise and 'require the proper officers empowered to register ships and vessels, and 'to grant certificates thereof, to issue registers *de novo* in any case 'where part of the property of any ship or vessel shall be so transferred, 'if the owners or proprietors of such ship or vessel, who were owners 'thereof at the time such ship or vessel was last registered, or whose property therein has not been so transferred, shall be desirous of having a 'certificate of registry *de novo*, instead of the indorsement on the old register as now required:' Be it therefore enacted by the authority aforesaid, That in case there shall be any alteration of property in the same port by the sale of one or more shares in any ship or vessel after registering thereof, and the owner or owners proprietor or proprietors of such ship or vessel, who were owners or proprietors thereof at the time such ship or vessel was last registered or whose property therein has not been so transferred, shall be desirous of having the ship or vessel registered *de novo*, it shall and may be lawful to and for the proper officers empowered to register ships and vessels and to grant certificates thereof, and such officers are hereby authorised and required to register every such ship or vessel *de novo*, provided all the rules regulations and conditions of the before-recited Act passed in the twenty-sixth year of the reign of his present Majesty, and of all other laws in force concerning the registry of ships and vessels *de novo* be complied with.

On Alteration of Property in Vessels in the same Port, they may be registered de novo.

XXII. 'And whereas *British* ships or vessels the property of which is 'in whole or in part transferred to persons not being subjects of his 'Majesty are not entitled to the privileges of *British* ships and vessels; 'and to prevent frauds in the employment of such ships or vessels as '*British* ships or vessels contrary to the intention of the laws of navigation, they are now by law required in certain cases to be registered *de novo*; for which purpose it is necessary that such ship or vessel should 'proceed with all due diligence to the port to which she belongs, or to 'any other port in which she may be legally registered by virtue of the 'said Act passed in the twenty-sixth year of his present Majesty's reign, 'in ordered to be registered *de novo*;' Be it enacted, That from and after the first day of *March* one thousand seven hundred and ninety-five, as often as any such transfer of property in any ship or vessel shall be made, while such ship or vessel is upon the sea on a voyage to a foreign port or ports in case the master of such ship or vessel is privy to such transfer, or in case he is not so privy as soon as he shall become acquainted therewith, such ship or vessel shall proceed directly to the port or ports for which the cargo then on board is destined, and shall sail from such port or ports to which the cargo then on board is destined to the port of his Majesty's dominions to which she belongs, or to any other such port in which she may be legally registered by virtue of the said Act, and such ship or vessel may take on board in the port or ports for which her original cargo was destined or in any other port or ports, being in the course of her voyage to the port of his Majesty's dominions in which she may be so registered *de novo*, such cargo and no other as shall be destined and may be legally carried to such port of his Majesty's dominions where she may be so registered *de novo*; and if such transfer of property shall be made while such ship or vessel is in any foreign port and the master of such ship or vessel is privy to such transfer, or in case he is not so privy as soon as he shall become acquainted therewith, such ship or vessel, after having delivered the cargo then on board such ship or vessel at the port or ports for which it is destined, shall sail from such port or ports to the port of his Majesty's dominions to which she belongs, or to any other such port in which she may be legally registered by virtue of the said Act, and may take on board at the port or ports for which her original cargo was so destined or at any other port being in the course of her voyage to the port of his Majesty's dominions in which she may be so registered *de novo*, such cargo and no other as shall be destined and may be legally carried to such port of his Majesty's dominions where she may be so registered *de novo*; and if such transfer of property shall be made while such ship or vessel is on a fishing voyage, and the

From March 1, 1795, on Transfer of Property to Persons not Subjects of his Majesty, Masters of Vessels to act as herein directed;

No. XX.
34 Geo. III. c. 68.

master of such ship or vessel is privy to such transfer, or in case he is not so privy as soon as he shall become acquainted therewith, such ship or vessel after having finished such fishing voyage without touching at any foreign port or ports, except for the purpose of repairs or refreshments or for delivering any part of the cargo she may have on board destined for such foreign port or ports, shall sail to the port of his Majesty's dominions to which she belongs or to any other such port where she may be legally registered by virtue of the said Act, and may take on board at the foreign port or ports last described or at any other port or ports, being in the course of her voyage to the port of his Majesty's dominions where she may be so registered *de novo*, (8.) such cargo and no other as shall be destined and may be legally carried to such port of his Majesty's dominions, and every such ship or vessel as aforesaid shall be registered *de novo* as soon as she returns to the port of his Majesty's dominions to which she belongs, or to any other such port in which she may be legally registered by virtue of the said Act; on failure whereof such ship or vessel shall to all intents and purposes be from thenceforth considered and deemed and taken to be a foreign ship or vessel, and shall not again be registered and be entitled to the privileges of a *British* ship or vessel, unless upon special representation of the circumstances of the case to four or more of the commissioners of his Majesty's customs in *England* or to three or more of the commissioners of his Majesty's customs in *Scotland*, or to the governor lieutenant-governor or commander in chief for the time being of the islands of *Guernsey* or *Jersey*, or of any colony plantation island or territory to his Majesty belonging, as the case may be, the said commissioners governor lieutenant-governor or commander in chief shall respectively on consideration of the special circumstances of the case think fit to order; and in such case they are hereby authorised to order that the said ship or vessel shall be registered and be thereby again entitled to the privileges of a *British* ship or vessel, and such registry shall be made and such certificate thereof shall be granted accordingly: Provided always, That all the regulations required by the laws in force concerning the first registry of ships and vessels shall in every such case be complied with: Provided nevertheless, That in no case of the transfer of property in whole or in part of any ship or vessel in the manner herein-before mentioned, he ship or vessel of which the property is so transferred shall be registered *de novo* or be entitled to the privileges of a *British* ship or vessel, unless such ship or vessel shall return to the port of his Majesty's dominions to which she belongs or to such other port in which she may be registered *de novo* within the period of twelve months after the date of such transfer of property, if such ship or vessel shall not be on a voyage to the east of the *Cape of Good Hope* or to the west of *Cape Horn*, or within two years if the ship or vessel is on a voyage to the east of the *Cape of Good Hope* or to the west of *Cape Horn* at the time such transfer of property shall take place, except by the order of the said commissioners governor lieutenant-governor or commander in chief respectively, upon special representation of the circumstances of the case in manner herein-before authorised.

and on Failure of Compliance, the Vessels to be deemed Foreign, and not entitled to the Privileges of British Vessels, unless the Commissioners of the Customs, &c. think fit, &c.

On Transfer of Property, Vessels to be registered de novo within limited Times.

(8.) In Hubbard *v.* Johnstone, 3 Taunt. 177. it was ruled, that this section destroyed the argument, that in all cases the ship was bound to return to the same port to which she belonged—See Note to Section 16 ante, and by Mansfield, C. J. The person who procured the Act undoubtedly had it in his contemplation, that, by the existing laws, the Ship might in some cases be sold at sea, and a Registration *de novo* take place; but he has left the world to guess what those cases are.

[No. XXI.] 37 George III. c. 63.—An Act for granting to Foreign Ships put under his Majesty's Protection the Privileges of Prize Ships, under certain Regulations and Restrictions; and for allowing Aliens in Foreign Colonies surrendered to his Majesty to exercise the

Occupations of Merchants or Factors.—[25*th May* 1797.] No. XXI. 37 Geo. III. c. 63.

[No. XXII.] 37 George III. c. 73.—An Act for preventing the Desertion of Seamen from *British* Merchant Ships trading to his Majesty's Colonies and Plantations in the *West Indies*.—[6*th June* 1797.]

37 Geo. III. c. 73.

'WHEREAS seamen and mariners after entering into articles to serve on board *British* merchant ships during the voyages from *Great Britain* to his Majesty's colonies and plantations in the *West Indies* and back to *Great Britain* do frequently desert from such ships on their arrival at or in such colonies and plantations, on account of the exorbitant wages given by masters and commanders of other *British* merchant ships by the run or gross to seamen or mariners when in such colonies or plantations to induce them to enter on board their ships: And whereas such seamen and mariners upon entering into articles for such voyages from *Great Britain* usually receive large sums of money in advance for the purpose of their outfit; and monthly allowances are frequently paid to their families towards their support and maintenance during the absence of such seamen and mariners: And whereas such desertions have been the means of depriving many merchant ships of a sufficient number of seamen and mariners to navigate them back to *Great Britain*, and thereby occasioned great losses to the merchants trading to the said colonies and plantations: For remedy whereof may it please your Majesty that it may be enacted;' and be enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the first day of *July* one thousand seven hundred and ninety-seven all and every seaman mariner and other person who shall desert at any time during the voyage either out or home from any *British* merchant ship trading to or from the said colonies or plantations shall, over and above all punishments penalties and forfeitures to which he is now by law subject, forfeit all the wages he may have agreed for with or be entitled to during the voyage from the master or owner of the ship on board of which he shall enter immediately after such desertion.

From July 1, 1797, Seamen deserting from Merchant Ships to or from the West Indies, to forfeit their Wages.

II. And be it further enacted, That all and every master or commander of any *British* merchant ship who shall from and after the first day of *July* one thousand seven hundred and ninety-seven hire or engage to serve on board his ship or vessel any seaman mariner or other person, who shall to the knowledge of such master have deserted from any other ship or vessel, shall forfeit and pay the sum of one hundred pounds, to be recovered levied and applied as herein-after directed.

Masters hiring Seamen who have deserted from any other Ship to forfeit 100*l*.

III. And be it further enacted, That no master or commander of any merchant ship or vessel which shall from and after the first day of *July* one thousand seven hundred and ninety-seven sail or proceed from any port or place in *Great Britain*, shall hire or engage or cause or procure to be hired or engaged any seaman mariner or other person at any port or place within his Majesty's colonies or plantations in the *West Indies*, to serve on board any such merchant ship or vessel at or for greater or more wages or hire for such service than according to the rate of double monthly wages, contracted for with the seamen mariners and other persons hired or engaged to serve on board such ship or vessel at the time of her then last departure from *Great Britain*, being in the same degree and station in which such seaman mariner or other person shall be so hired or engaged at any such port or place as aforesaid; unless the governor chief magistrate collector or comptroller of such port or place in the said colonies or plantations shall think that greater or more wages or hire than double the monthly wages aforesaid should or ought to be given to such seaman mariner or other person as aforesaid, and do and shall

No Master sailing from Great Britain after July 1, 1797, to hire Seamen in the West Indies at more than double Wages, unless authorised by the Governor, &c.

No. XXII. 37 Geo. III. c. 73.

accordingly authorise or direct the same to be given by writing under his hand; (1) that then and in such case the master or commander of such ship or vessel shall and may be at liberty to pay, and the seaman mariner or other person on board such ship or vessel to receive such greater or higher wages as such governor chief magistrate collector or comptroller shall direct as aforesaid; and that all contracts bonds bills notes and other securities promises and undertakings, which shall be made entered into or given contrary to the intent and meaning of this Act, shall be null and void to all intents and purposes; and that the master or commander of any such merchant ship or vessel or other person or persons whomsoever, who shall make enter into or give or cause or procure to be made entered into or given any such contract bond bill note or other security promise or undertaking, or who shall hire or engage or cause or procure to be hired or engaged any seaman mariner or other person to enter on board any ship or vessel, contrary to the intent and meaning of this Act, or who shall pay or cause or procure to be paid or given any greater or more hire or wages or other gratuity or advantage whatsoever, to or for any seaman mariner or other person so hired or engaged at any such port or place within his Majesty's colonies or plantations in the *West Indies* as aforesaid than is allowed or directed by this Act, shall for every such offence forfeit and pay the sum of one hundred pounds; to be recovered levied and applied in the manner herein-after directed.

Contracts contrary to this Act void, and Persons entering into them, &c. to forfeit 100*l.*

Every Ship trading to the West Indies, to have an Apprentice under 17 Years old, for every 100 Tons burthen, &c.

IV. And be it further enacted, That all and every master and masters of any merchant ship or merchant ships trading to his Majesty's colonies and plantations in the *West Indies* shall have on board his or their ship or ships at the time of such ship or ships clearing out from *Great Britain* one apprentice, who shall be under the age of seventeen years, duly indented for three years, for every one hundred tons admeasurement of such ship or ships, and so in proportion for every one hundred tons which such ship or ships shall admeasure according to the certificate of registry, and the indenture or indentures of every such apprentice shall be duly enrolled at the custom house of the port from whence any such ship shall clear out with the collector or comptroller, within one month after the date or execution thereof; which said apprentice and apprentices shall be and is and are hereby exempt from serving in his Majesty's navy for the space of three years from the date of such indenture or indentures; and all and every owner or owners or master and masters neglecting to enrol the same as aforesaid, shall for every such offence forfeit and pay the sum of ten pounds, to be paid in manner following; (that is to say,) one moiety by the owner or owners of such ship or ships, and the other moiety by the master or masters thereof, to be levied recovered and applied in manner herein-after mentioned.

Apprentices exempt from serving in the Navy for Three Years, Penalty of 10*l.* for not enrolling them.

Masters of such Ships out and home, within Ten Days after arrival, to deliver Lists containing certain Particulars, on Penalty of 50*l.*

V. And be it further enacted, That all and every master and masters of such ship or ships shall within ten days after their arrival out at any port or ports in the said colonies or plantations, and also within ten days after their arrival home at any port or ports in *Great Britain*, deliver upon oath, to be made before the collector or comptroller of such port or ports respectively (who is hereby authorised to administer the same) a true and exact list and description of all and every the crew on board such ship or ships at the time of their clearing out from any port or ports in *Great Britain*, and also of the crew on board the same at the time of their arrival in any port or ports in the said colonies or plantations, and also a true and exact list and description of all and every seaman mariner or other person who has or have deserted from such ship or ships, or who has or have died during the voyage; and also a true account of the wages due to each seaman mariner or other person so dying at the time of his death; and all and every master and masters omitting neglecting or refusing so to do, shall for every such offence forfeit the sum of fifty pounds; and for which said list and account so delivered such collector

Collector, &c. entitled to 2*s.* 6*d.* on Delivery of Lists, which may be inspected on Payment of 1*s.*

(1.) A general License to the Captain "to procure men on such terms as he can" is void. Rogers v. Lacy, 2 B. & P. 57

or comptroller shall be entitled to demand and receive from the person so delivering the same the fee of two shillings and six pence, and no more; and it shall and may be lawful to and for all and every master and masters of any ship or ships or other person or persons to inspect such list and lists from time to time as he or they may think proper; for which inspection the said collector or comptroller shall be entitled to demand and receive from the person making the same the sum of one shilling, and no more.

No Seamen entering on board any Vessel in the West Indies, which sailed from England after July 1, 1797, to be entitled to greater Wages than herein authorised.

VI. And be it further enacted by the authority aforesaid, That no seaman mariner or other person who shall at any port or place within his Majesty's colonies or plantations in the *West Indies* hire or engage himself to serve, or who shall in the said colonies or plantations enter on board any merchant ship or vessel which shall sail from *Great Britain* after the first day of *July* one thousand seven hundred and ninety-seven shall be entitled to nor shall he sue for recover or receive any greater or more wages or hire or other gratuity or advantage whatsoever, on account of or for such his service than such wages or hire as herein-before authorised or directed to be paid or received.

Wages of dead Men to be paid to the Receiver of the 6*d.* duty for Greenwich Hospital, on Penalty of 50*l.* and double the Wages.

VII. And be it further enacted, That all and every sum and sums of money which shall be due for wages to any seaman mariner or other person hired or engaged on board any *British* merchant ship for any voyage from any port or ports in *Great Britain* to any port or ports in the said colonies or plantations, and who has or have died on board during the voyage, shall within three calendar months after the arrival of such merchant ship in any port or ports in *Great Britain* be paid to the receiver of the sixpenny duty for *Greenwich* Hospital for the time being to the use of the executor or executors administrator or administrators of the seaman mariner or other person so dying; (2.) and if any master of any such merchant ship shall neglect or refuse to pay over or tender to the said receiver all and every such sum and sums of money within the time herein-before limited, he shall forfeit and pay for every such offence the sum of fifty pounds and also double the amount of the sum or sums of money so due to any seaman mariner or other person for wages as aforesaid.

Disposition of such Wages if not demanded of the Receiver in Three Years.

VIII. Provided always and be it further enacted, That all and every such sum and sums of money which shall not be lawfully demanded of the said receiver within the term of three years after payment thereof to him in manner aforesaid shall be forfeited, and shall go and be paid to the use of the seamen's hospital of the port to which such ship belongs; but in case there shall be no seamen's hospital at the port to which such ship belongs, then to and for the use and benefit of the old and disabled seamen of the same port and their families, to be distributed at the discretion of the magistrates for the county where such port shall be situate or any two or more of them.

Disposition of Penalties.

IX. And be it further enacted by the authority aforesaid, That the penalties and forfeitures given by this Act shall be paid and applied in manner following; that is to say, one third part thereof for and towards the support of *Greenwich* Hospital; one other third part thereof for and towards the support of the seamen's hospital at the port to which the ship or vessel in respect of which the forfeiture shall arise belongs; but in case there shall be no seaman's hospital at the port to which such ship or vessel belongs, then to and for the use and benefit of the old and disabled seamen of the same port and their families, to be distributed at the discretion of the persons having the direction of the merchants' seamen's fund at such port, or in case there shall be no such establishments there, by the magistrates or overseer of the poor of such port; and the other third part thereof to and for the person or persons who shall inform and sue for the same; and that such penalty shall be recovered by bill plaint or information in any of his Majesty's courts of record at *Westminster;* or such of them as do not exceed the sum of twenty pounds upon in-

Recovery of Penalties

(2.) The Executor may sue the Captain for any Wages due beyond the sum paid—Armstrong *v.* Smith, 1 N. R. 299.

No. XXII. 37 Geo. III. c. 73.

formation on the oath of one or more witnesses before any one or more of his Majesty's justice or justices of the peace in any part of the kingdom of *Great Britain* who shall not reside more than ten miles from the place of abode of the person or persons complained of, which justice and justices is and are hereby authorised and required to issue out his or their warrant or warrants to bring before him or them every person charged with any offence under this Act; and in case he or they shall refuse or neglect to pay such penalties or forfeitures as aforesaid, to issue his or their warrant or warrants to levy the same by distress and sale of the offenders goods, and in case no distress can be found, to commit the offender or offenders to the common gaol of the city town or place within the jurisdiction of such respective justice or justices, there to remain for the space of three calendar months, or until he or they shall pay the same.

Act not to extend to Seamen producing Certificates of Discharge.

X. Provided nevertheless and be it enacted, That nothing in this Act shall extend or be construed to extend to any contract or agreement which shall or may be made with any seaman mariner or other person hired or engaged to serve on board any merchant ship or vessel at any port or place within his Majesty's colonies or plantations in the *West Indies* who shall at the time of such hiring or engagement produce and deliver to the master and commander of such merchant ship or vessel a certificate under the hand of the master or commander of the ship or vessel on board of which such seaman mariner or other person had then last served, signed in the presence of one or more witness or witnesses stating their usual place or places of abode, thereby declaring or certifying that such seaman mariner or other person had been duly discharged from the ship or vessel on board of which he had so last served; and which certificate the said master or commander shall grant within three days next after application made to him by such seaman mariner or other person before a witness, or in default thereof shall forfeit and pay the sum of twenty pounds, to be levied recovered and applied in manner hereinbefore directed; nor to any contract or agreement to be made with any seaman mariner or other person hired or engaged to serve on board any merchant ship or vessel which through necessity or on account of very hazardous service or extraordinary duty require such contract or agreement to be made and more wages or hire given, and of which necessity service or extraordinary duty proof shall be made on oath before the chief magistrate or principal officer of any port or place, or before any justice or justices of the peace of the said colonies or plantations; and provided also that such seaman mariner or other person so hired or engaged to serve on board any ship or vessel so requiring such service shall not have deserted from the ship or vessel on board of which he had then last served; and provided also that no greater or higher wages or hire shall be given by any master or commander, or taken or received by any seaman mariner or other person as aforesaid except in cases of such necessity very hazardous service or extraordinary duty as aforesaid, than after the rate of double the monthly wages or the wages to be settled or directed by any governor chief magistrate collector or comptroller as herein-before directed to be paid or received as aforesaid.

Masters to grant such Certificates on Penalty of 20*l.*

Act not to extend to Seamen hired through Necessity, &c.

After July 1, 1797, Articles to be entered into agreeably to annexed Schedule.

XI. And be it further enacted by the authority aforesaid, That from and after the first day of *July* one thousand seven hundred and ninety-seven the articles to be entered into by and between the masters seamen and mariners of such merchant ship or ships shall be agreeably and to the purport and effect as mentioned in the schedule hereto annexed, marked with the letter A.

Publick Act.

XII. And be it further enacted by the authority aforesaid, That this Act shall be deemed and taken to be a public Act; and all judges and justices are hereby required to take notice of it as such without specially pleading the same.

The SCHEDULE to which this Act refers.

A.

Ship.

IT is hereby agreed between the master seamen and mariners of the ship now bound for the port of and

the master or commander of the said ship, That in consideration of the monthly or other wages against each respective seaman or mariner's name hereunto set they severally shall and will perform the above-mentioned voyage; and the said master doth hereby agree with and hire the said seamen and mariners for the said voyage at such monthly wages to be paid pursuant to the laws of *Great Britain;* and they the said seamen and mariners do hereby promise and oblige themselves to do their duty and obey the lawful commands of their officers on board the said ship or boats thereunto belonging as become good and faithful seamen and mariners; and at all places where the said ship shall put in or anchor during the said ship's voyage to do their best endeavours for the preservation of the said ship and cargo and not to neglect or refuse doing their duty by day or night; nor shall go out of the said ship on board any other vessel or be on shore under any pretence whatsoever till the voyage is ended and the ship discharged of her cargo without leave first obtained of the master captain or commanding officer on board; and in default thereof they freely agree to be liable to the penalties mentioned in the Act of Parliament made in the second year of the reign of King *George* the Second, intituled *An Act for the better Regulation and Government of Seamen in the Merchants Service;* and the Act made in the thirty-seventh year of his present Majesty's reign, intituled *An Act for preventing the Desertion of Seamen from* British *Merchant Ships trading to his Majesty's Colonies and Plantations in the* West Indies: And it is further agreed by the parties to these presents, That twenty-four hours absence without leave shall be deemed a total desertion and render such seamen and mariners liable to the forfeitures and penalties contained in the Acts above recited; that each and every lawful command which the said master shall think necessary to issue for the effectual government of the said vessel suppressing immorality and vice of all kinds be strictly complied with under the penalty of the person or persons disobeying forfeiting his or their whole wages or hire together with every thing belonging to him or them on board the said vessel: And it is further agreed, That no officer or seaman or person belonging to the said ship shall demand or be entitled to his wages or any part thereof until the arrival of the said ship at the above-mentioned port of discharge and her cargo delivered, nor less than twenty days in case the seamen is not employed in the delivery: And it is hereby further agreed between the master and officers of the said ship, That whatever apparel furniture and stores each of them may receive into their charge belonging to the said ship shall be accounted for on their return; and in case any thing shall be lost or damaged through their carelessness or insufficiency it shall be made good by such officer or seaman by whose means it may happen to the master and owner of the said ship: And whereas it is customary for the officers and seamen on the ship's return home in the river and during the time their cargoes are delivering to go on shore each night to sleep, greatly to the prejudice of such ship and freighters; Be it further agreed by the said parties, That neither officer nor seaman shall on any pretence whatsoever be entitled to such indulgence, but shall do their duty by day in discharge of the cargo and keep such watch by night as the master or commander of the said ship shall think necessary in order for the preservation of the above: And whereas it often happens that part of the cargo is embezzled after being delivered into lighters, and as such losses are made good by the owners of the ships; Be it therefore agreed by these presents, That whatever officer or seaman the master shall think proper to appoint shall take charge of the cargo in the lighters and go with the same to the lawful quay and there deliver his charge to the ship's husband or his representative or see the same safely weighed at the King's beam, and in consequence of their true fidelity such officer or seaman shall be entitled to two shillings and six pence each lighter, exclusive of their monthly pay; and should it so happen that lighters are detained a considerable time at the quay before they can be unloaded such officer and seaman so appointed shall in that case be entitled to two shillings and six pence for every twenty-four hours, exclusive of their

No. XXII. 37 Geo. III. c. 73.

said monthly pay; that each seaman and mariner who shall well and truly perform the above-mentioned voyage (provided always that there be no plunderage embezzlement or other unlawful acts committed on the said vessel's cargo or stores) shall be entitled to their wages or hire that may become due to him pursuant to this agreement; that for the due performance of each and every the above-mentioned articles and agreements and acknowledgment of their being voluntary and without compulsion or any other clandestine means being used, the said parties have hereto subscribed their names the day and month set opposite to their respective names.

Place and Time of Entry.	Men's Names.	Quality.	Witness to each Man's signing.	Pay in the River.		Wages per Month, or by the Run for the Voyage.	Whole Wages.
				Whole.	Half.		

[No. XXIII.] 43 George III. c. 56.—An Act for regulating the Vessels carrying Passengers from the United Kingdom to his Majesty's Plantations and Settlements abroad, or to Foreign Parts, with respect to the Number of such Passengers.—[*24th June* 1803.]

[No. XXIV.] 45 Geo. III. c. 81.—An Act to amend an Act in the Thirty-first Year of his present Majesty, for the better Regulation and Government of Seamen employed in the Coasting Trade.—[*2d July* 1805.]

45 Geo. III. c. 81.
31 Geo. 3. c. 39.

'FOR better enforcing the provisions respecting the agreements of seamen and mariners made in an Act passed in the thirty-first year of his present Majesty's reign, intituled *An Act for the better Regulation and Government of Seamen employed in the Coasting Trade of this Kingdom;*' Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same,

Punishment for Seamen refusing to fulfil the Agreement entered into in pursuance of recited Act. Imprisonment.

That in case of any seaman or mariner, after he shall have entered into any agreement as mentioned in the said Act, shall neglect or refuse to proceed on the intended voyage or voyages for which he shall have entered or upon which any ship or vessel trading coastwise as therein mentioned shall be destined to proceed, it shall and may be lawful upon complaint made thereof to any of his Majesty's justices of the peace within their respective jurisdictions, by the master or commander owner or owners or any other person having charge or command of the ship or vessel to which such seaman or mariner so belongs, for such justice and he is hereby required to issue his warrant to apprehend such seaman or

mariner; and in case such seaman or mariner shall not give sufficient reason for such refusal to the satisfaction of such justice, then to commit such seaman or mariner to the house of correction there to be kept to hard labour for any time not exceeding thirty days nor less than fourteen days.

No. XXIV. 45 Geo. III. c. 81.

[No. XXV.] 48 George III. c. 130.—An Act for preventing the various Frauds and Depredations committed on Merchants, Ship-Owners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain Defects relative to the Adjustment of Salvage, under a Statute made in the Twelfth Year of the Reign of her late Majesty Queen *Anne*.—[*30th June* 1808.]

P.

48 Geo. III. c. 130.

XXI. 'AND whereas it is expedient that the like means of conclusively adjusting and recovering the *quantum* of the monies 'or gratuities to be paid to the several persons acting or being employed in 'the salvage of any ship vessel or goods should subsist and be by law applicable in cases where the salvors shall have acted under and by the mere 'employment and authority of the commander or other superior officer 'mariners or owners of any ship or vessel in distress, as are now by law 'provided for adjusting the *quantum* of such monies or gratuities which 'shall have become due in cases where application shall have been first 'made to officers of the customs or other the officer or officers in that 'behalf named and appointed in and by a certain statute made in the 'twelfth year of the reign of our late Sovereign Lady Queen *Anne*, intituled *An Act for preserving of all such Ships and Goods thereof which 'shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions*, and where assistance shall 'have been thereupon rendered in pursuance of the provisions of that 'statute;' Be it therefore enacted and declared by the authority aforesaid, That from and after the passing of this Act all and every the means which in virtue of the statute last mentioned subsist and may now be by law applied for the conclusively adjusting and for the recovering of the *quantum* of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship vessel or goods in cases where application shall have been first made pursuant to that statute to officers of the customs or other the officer or officers therein in that behalf mentioned, and assistance shall have been thereupon rendered and had in pursuance of the provisions of that statute shall be by law applicable and available in like manner to all intents and purposes in cases where the salvors shall have acted under and by the mere employment and authority of the commander or other superior officers mariners or owners of any ship or vessel in distress although no such application shall have been made to nor any authority or assistance derived from any officers of the customs or other the officer or officers in the said statute in that behalf mentioned; and that upon payment or tender and refusal of the *quantum* of monies or gratuities to be paid to the several persons who shall have acted or been employed in such salvage, or in case such payment or tender cannot be made, on security being given for the due payment thereof to the satisfaction of the justices who shall have adjusted such *quantum* of gratuities, it shall not be lawful for any officer of the customs or other person or persons having the possession or custody of such ship vessel or goods any longer to retain the possession or custody of the same or any part thereof by reason or pretence of any claim or right to a compensation or gratuity for such salvage as aforesaid or for having acted or been employed therein.

Regulations of 12 Anne st. 2. c. 18. as to adjusting and recovering Quantum of Salvage extended to Cases of Salvage without interference of Officers of the Customs.

XXII. Provided always, That in cases where the salvors shall have acted without application made to and without any authority or assistance

Quantum of Money of Gratuity to Salvage may be ascertained by Justices of Peace.

No. XXV. 48 Geo. III. c. 130.

derived from any officer of the customs or other officer in the said Act mentioned, and the commander or other superior officer mariners or owners of such ship or vessel so saved as aforesaid, or the merchant or other person whose goods shall be so saved, or their agents as aforesaid shall disagree with such salvors touching the *quantum* of the monies or gratuity deserved by any persons so employed as aforesaid, it shall be lawful for the commander of such ship or vessel so saved or the owner of the goods or merchant intererested therein or their agents and for such salvors as aforesaid to nominate three neighbouring justices of the peace to adjust the *quantum* of the monies or gratuities to be paid to such salvors; and in case the parties shall not agree in such nomination, that then on the application of any of the parties to any one neighbouring justice of the peace, the justice so applied to shall nominate two other neighbouring justices of the peace; and such three neighbouring justices shall and may thereupon and they are hereby authorised and required to adjust the *quantum* of the monies and gratuities to be paid to all and each of such salvors who shall disagree with such master commanding officer merchant or owners or their agents as aforesaid touching the *quantum* of monies or the gratuity to be paid to him or them respectively for his or their having been employed and acted in such salvage as aforesaid.

XXIII. [Saving of jurisdiction of Cinque Ports.]

" Publick Act. § 24."

Continuance of Act 7 Years, &c.

XXV. Provided always, That this Act shall continue in force for seven years and from thence to the end of the then next session of Parliament and no longer.

[No. XXVI.] 49 George III. c. 122.—An Act for preventing Frauds and Depredations committed on Merchants, Ship-Owners, and Underwriters, by Boatmen and others; and also for remedying certain Defects relative to the Adjustment of Salvage in *England*, under an Act made in the Twelfth Year of Queen *Anne*. —[20*th June* 1809.]

49 Geo. III. c. 122.

'WHEREAS great depredations have for many years past been committed by boatmen pilots hovellers and others on ships in distress and otherwise and anchors cables and other property of ships and vessels on the coasts and in the harbours bays and rivers of *England* and *Wales* and the town and harbour of *Berwick-upon-Tweed* are oftentimes carried away or destroyed by such boatmen pilots hovellers and others, or when found are not restored to the owners thereof, and great extortions are committed and exorbitant demands made upon the masters and owners of such ships for saving and preserving the same, to the great loss and injury of the ship-owners merchants underwriters and others concerned in shipping:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the first day of *August* one thousand eight hundred and nine all pilots boatmen hovellers or other persons, who shall take up any anchors cables or any goods or merchandize which may have been parted with cut from or left by any ship or vessel within any harbours rivers or bays or on any of the coasts of this kingdom, whether the same ship or vessel shall be or shall have been in distress or otherwise, and which shall have been weighed swept for or taken possession of or by any such boatman pilot hoveller or other person, shall send a report in writing of the articles so found and stating the marks (if any) thereon, and also an accurate and particular description of the bearings distances and situations and time when and where the same were so found to a deputy vice-admiral or his agent at or near to the port

Pilots and others taking Possession of Anchors, Cables and other Ships' Materials shall send a Report thereof to a Deputy Vice-admiral, and deposit the same in Places to be appointed; or shall be considered as Receivers of stolen Goods.

or place where such boatman pilot hoveller or other person shall first arrive with such articles within forty-eight hours after his or their arrival at such port or place, or before he or they shall leave the port if he or they shall quit it before that time shall expire; and shall also within such period as aforesaid deliver such articles so found into a proper warehouse or such other place as the vice-admiral of each county shall appoint for safe custody until the same shall be claimed by the owner or owners thereof or his her or their agent or agents, and the salvage together with such other charges and expences as are hereinafter directed to be paid in respect of such articles paid by him or them or security given for the payment thereof to the satisfaction of the salvor or salvors thereof; and every such pilot boatman hoveller or other person who shall wilfully and fraudulently keep possession of or retain or conceal or secrete any anchors or cables so found weighed swept for or taken possession of as aforesaid, and shall not report and deliver the same at some proper warehouses or other place in the manner aforesaid and within the time herein-before limited, shall on conviction be adjudged and deemed guilty of receiving goods knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore.

II. & III. [Deputy vice-admiral shall send report to Trinity House as soon as the articles amount to 20*l.* value.]

Deputy Vice-admiral may seize Goods not reported and deposited and shall have One-third of the Value (See § 6.)

IV. And be it further enacted, That it shall be lawful for any deputy vice-admiral or his agent to seize and detain any such article as shall not have been reported in the manner herein-before directed, and upon such seizure such deputy vice-admiral or his agent shall deposit the same in the warehouse or other place to be appointed as aforesaid, and shall within two days thereafter send a report in writing of the articles so seized and stating the marks (if any) thereon to the said corporation of the Trinity-house of *Deptford Strond* as before directed to be made publick as aforesaid; and every such deputy vice-admiral or his agent so seizing, who shall not make such report as aforesaid within two days after seizure as aforesaid, shall on conviction before any justice of the peace or magistrate upon the oath of one credible witness or on the confession of the party offending forfeit and pay the sum of twenty pounds for every such neglect together with double the value of the goods so seized; one-half of which penalty shall be paid to the informer and the other half to the poor of the parish or township where such offence shall be committed; and every deputy vice-admiral or his agent who shall make any such seizure without any previous information being given to such deputy vice-admiral or his agent shall on the same articles being claimed by and delivered to the owner thereof or his or their agent be entitled to receive such sum of money as shall be equal to one-third part of the value thereof.

Value may be ascertained as on Salvage (See § 8, &c.)

V. Provided always and be it further enacted, That if the owner and deputy vice-admiral or agent so seizing cannot agree on the value of the articles, such value shall be ascertained in like manner as is hereinafter directed with regard to salvage.

If Deputy Vice-admiral seize on Information, Informer shall share in One-third, (See § 4, 32, &c.)

VI. Provided also and be it further enacted, That if any such seizure shall have been made in consequence of any information given to any such deputy vice-admiral or his agent, the deputy vice-admiral or his agent so seizing shall only be entitled to receive from the owner or the agents of the articles one-sixth part of the value thereof, and one other sixth part of such value shall be paid to the person who shall have given the information, the value of such articles to be ascertained in manner aforesaid.

Articles not claimed within a Year shall be sold under stat. 12 Anne, c. 18.

VII. And be it further enacted, That if any such articles so reported and delivered into the warehouse or other place as aforesaid shall not be claimed within a year and a day after such report shall have been transmitted to the said corporation of the Trinity-house of *Deptford Strond* as before mentioned, the same shall be sold and a certificate of such sale shall be delivered to the purchaser thereof under the directions of the High Court of Admiralty, and the monies arising from the sale thereof shall be applied in the manner directed in and by an Act passed in the twelfth

year of the reign of her late Majesty Queen *Anne*, intituled *An Act for preserving all such Ships and Goods thereof which shall happen to be found on Shore or stranded on the Coasts of this Kingdom, or any other of her Majesty's Dominions*, and if the same shall have been seized by the deputy vice-admiral or his agent as aforesaid, then the deputy vice-admiral or agent so seizing and the person who shall have given such information as shall have led to the seizure (if any such information shall have been given) shall be equally entitled to the salvage which shall be allowed by the high Court of Admiralty to the salvors in the case of unclaimed property.

Deputy Vice-admiral seizing and Informer shall be equally entitled to Salvage.

VIII. And be it further enacted, That if the salvors of any such articles or any goods so found weighed swept for or taken possession of as aforesaid and so lodged and reported as aforesaid and the owner or owners thereof or his her or their agent or agents cannot agree respecting the amount of salvage to be paid for or in respect of the same or the value thereof, as the case may be, then the matter in difference shall be determined by any two justices of the peace residing near to the place where such articles or goods shall be deposited; and such justices shall begin to proceed in their inquiry as to such matters in dispute within forty-eight hours after such difference shall be referred to them for their determination thereof; and if they cannot agree respecting the same, then it shall be lawful for them to nominate any third person conversant in maritime affairs, at their option, who shall ascertain the amount of the salvage to be paid or the value thereof, as the case may be, within forty-eight hours after he shall have been so nominated as aforesaid, and the said justices and such third person so nominated as aforesaid shall have full power and authority whenever they see occasion to examine the parties or their witnesses upon oath, which oath they are hereby authorised to administer.

Two Justices empowered to determine Differences respecting Salvage of such Articles.

Such Justices may nominate a third Person as Umpire.

IX. And be it further enacted, That it shall also be lawful for the said justices to decide in the like manner and within the same time as is herein-before directed with regard to salvage on all claims and demands whatsoever which shall or may after the first day of *August* one thousand eight hundred and nine be made by pilots boatmen and other persons for services of any description (except pilotage) to be rendered by them to any ship or vessel, as well for carrying off from the shore to such ship or vessel any anchors cables or other stores from any port or ports of the coast of *England* and *Wales* and *Berwick-upon-Tweed*, or for the saving and preserving any goods or merchandize which may have been wrecked stranded or cast away from any ship or vessel, or for being instrumental in saving the life or lives of any person or persons on board the said ship or vessel, the master owner or owners of such ship or vessel or his her or their agent or agents being present with such justices; and that the said justice or such other person so appointed as aforesaid shall have full power and authority to hear and determine on all cases whatever of services rendered by pilots boatmen and others to ships or vessels (except pilotage) whether such ships or vessels shall at the time be in distress or not, and that they shall have the like power of examining the parties or their witnesses upon oath as last herein-before directed; and the decision of such justices or of the person so to be by them appointed as aforesaid shall be final and conclusive on all parties, save and except in such cases in which an appeal shall be interposed by either party to the High Court of Admiralty, such appeal to be interposed within thirty days after the award of the justices or such person so appointed as aforesaid.

Two Justices may determine upon Remuneration for Services to Ships in Distress, (except Pilotage,) &c.

Decisions of Justices or their Umpire shall be final, unless on Appeal to Admiralty.

X. And be it further enacted, That in case the person or persons so claiming to be entitled to salvage, or the party or parties who is or are to pay the same, or their agents, shall be dissatisfied with such award and decision of the justices or of the person so to be nominated by them as aforesaid, it shall be lawful for either of them respectively within forty-eight hours after such award is made, but not afterwards, to declare to the justices, or such other person to be nominated by them as aforesaid, his her or their desire of obtaining the judgment of the High Court of Admiralty respecting the said salvage, and thereupon the person or per-

Persons dissatisfied may appeal to the High Court of Admiralty, but the Goods shall be restored to the Owners on giving Bail.

sons so claiming to be entitled to salvage shall be compelled to proceed within thirty days from the date of such award, by taking out a monition against the adverse party; but in such case the said justices are hereby required and empowered to deliver to the owners and proprietors or their agents any such anchor or cable goods or other articles respecting which any claim for salvage shall be made upon the owners or proprietors thereof, his her or their agent giving good and sufficient bail in double the amount of the value of the articles in respect of which such salvage shall be claimed, and which bail shall be taken by a commissioner for taking examinations in prize causes if there shall be one in the port or place where such difference shall arise, but if there shall be no commissioner there then the said justices to whom such difference shall have been referred or either of them or any other of his Majesty's justices of the peace are and is hereby authorised to take the same; and the commissioner or justice who shall take such bail shall certify the same according to the form contained in the schedule hereunto annexed and transmit the same without delay to the High Court of Admiralty, together with a true certificate in writing of the gross value of the whole of the articles respecting which salvage shall be claimed, and also a copy of such proceedings and awards on unstamped paper, certified under the hand of such commissioner or justice taking the bail as aforesaid, and the same shall be admitted by such Court of Admiralty as evidence in the cause.

See Schedule (A.)

Umpire named by Justices shall be paid by the Parties.

XI. And be it further enacted, That it shall and may be lawful for the persons so to be named by the said justices as aforesaid who shall decide on the amount of salvage to be paid or on the value of the articles or on the remuneration to be made to persons rendering assistance to ships or vessels or persons as aforesaid to demand and receive of and from the owner or owners of the articles saved, or of the ships or vessels in behalf of which the services may have been rendered, or his her or their agent or agents a sum of money not exceeding two pounds two shillings each, and such owner or owners or his her or their agent or agents shall and is and are hereby required to pay to the persons so to be by the said justices nominated as aforesaid, such fee or reward immediately after he shall have made his award or decision and on delivery of the same.

Penalty on cutting away or defacing Buoys, Buoy-ropes, &c. Single Felony, &c.

XII. And be it further enacted, That if any person or persons shall from and after the first day of *August* one thousand eight hundred and nine wilfully cut away cast adrift remove alter deface sink or destroy, or shall do or commit any act with intent and design to cut away cast adrift remove alter deface sink or destroy, or in any other way injure or conceal any buoy buoy-rope or mark belonging to any ship or vessel, or which may be attached to any anchor or cable belonging to any ship or vessel whatever, whether in distress or otherwise, such person or persons so offending shall, on being convicted of such offence, be deemed and adjudged to be guilty of felony and shall be liable to be transported for any term not exceeding seven years, or in mitigation of such punishment to be imprisoned for any number of years at the discretion of the court at which the conviction shall be made.

Penalty on purchasing Anchors, &c. contrary to this Act, Misdemeanor, &c.

XIII. And be it further enacted, That if any person or persons shall knowingly and wilfully and with intent to defraud and injure the true owner or owners thereof, or any person interested therein as aforesaid, purchase or receive any anchors cables or goods or merchandize which may have been taken up weighed swept for or taken possession of, whether the same shall have belonged to any ship or vessel in distress or otherwise, or whether the same shall have been preserved from any wreck, if the directions herein-before contained with regard to such articles shall not have been previously complied with, such person or persons shall on conviction thereof be deemed guilty of receiving stolen goods knowing the same to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, or be liable to be transported for seven years, at the discretion of the Court before which he she or they shall be tried.

XIV. [Masters of ships bound to parts beyond the seas, finding or taking on board anchors and other articles, shall report the same to the Trinity-

No. XXVI. 49 Geo. III. c. 122.

House, and on their arrival in *England* shall deposit them. Penalty 200*l.* to 50*l.* half to informer and half to Merchants' Seamen's Society, under 20 Geo. II. c. 30.]

XV. [Fees to be paid for Reports.]

Penalty on selling or disposing of Anchors or Cables in Foreign Countries, Single Felony.

XVI. 'And whereas pilots hovellers boatmen and other persons in 'small vessels have for many years conveyed anchors and cables which 'may have been weighed swept for or taken possession of by them as 'aforesaid, or which they may have purchased of other persons knowing 'them to have been weighed swept for or taken possession of without 'being reported as aforesaid, to foreign countries, and there sold and dis-'posed of to the manifest injury and loss of the owners thereof; For reme-'dying whereof,' Be it further enacted, That every pilot hoveller boat-man or the master of any such vessel who shall convey after the said first day of *August* one thousand eight hundred and nine any such anchor or cable to any foreign port harbour creek or bay and there sell and dispose of the same shall be deemed and adjudged guilty of felony and shall be transported for any term not exceeding seven years.

Dealers in Marine Stores shall have their Names painted on their Store-houses. Penalty 20*l.* Such Dealers shall not cut up Cables without a Permit from a Magistrate to be granted on Affidavit, &c.

XVII. And be it further enacted, That all persons who shall trade or deal in buying or selling anchors cables sails or old junk old iron or marine stores of any kind or description shall have their names with the words "Dealer in Marine Stores" painted distinctly in letters of not less than six inches in length upon the front of all their storehouses ware-houses and other deposits for such goods; and in default of their so doing they shall on conviction before any justice or justices of the peace or magistrate or magistrates of any jurisdiction where such storehouse ware-house and depôt shall be, upon the oath of one credible witness or on confession of the party offending, forfeit and pay a sum not exceeding twenty pounds nor less than ten pounds, one half of which penalty shall be paid to the informer and the other half to the poor of the parish or township where such offence shall be committed; and that it shall not be lawful for such dealers or traders to cut up any cable or any part of a cable exceeding five fathoms in length, or uncant untwine or unlay the same into junk or paper-stuff on any pretence whatsoever, without first obtaining a permit from some justice of the peace or magistrate residing near to the residence of such dealer, which permit shall not be granted unless an affidavit shall have been made that the cable so intended to be cut up had been *bona fide* purchased and without fraud by the party so intending to cut up the same and without any knowledge or suspicion on his or her part that the same had been or were dishonestly come by: and in which affidavit shall also be specified the particular quality and description of such cable, and the name or names of the seller or sellers thereof, which affidavit shall be recited and set forth at length in the permit thereupon granted, on pain of forfeiting for the first offence any sum not exceeding twenty pounds nor less than ten pounds, and for every second or further offence any sum not exceeding fifty pounds nor less than twenty pounds, to be recovered before any justice of the peace, and one half thereof to go to the informer and the other half to the poor of the parish in which such offence shall have been committed.

Penalty 10*l.*

Dealers shall keep an Account of old Stores bought by them. Shall advertise before cutting up of Cordage.

XVIII. And be it further enacted, That for the more effectual prevention of such frauds all dealers in such marine stores as aforesaid shall keep a book or books fairly written, in which entries shall be from time to time regularly made of all such old marine stores as shall be by them from time to time bought, containing a true account and description of the times when the same were so respectively bought by them, and of the names and places of abode of the respective sellers thereof: and before any person who shall obtain such permit for the cutting up of any such cable (as herein-before required to be obtained) shall proceed to cut up the same by virtue thereof, there shall be published by the space of one week at least before the cutting up the same one or more advertise-ment or advertisements in some publick newspaper printed nearest to the storehouse warehouse or depôt where the articles shall be deposited, noti-fying that such party had obtained such permit for the purpose of cutting up such cable and of such kind and quality as therein described, and also

specifying the place where such articles shall be deposited; whereupon it shall be lawful for all and every person or persons who may have just cause to suspect that such articles are the property of such person or persons and shall have verified upon oath the fact of such his her or their suspicion before any justice of the peace or magistrate residing near to the said storehouse warehouse or depôt, by warrant for that purpose thereupon granted, to require of and from such dealer who shall have so advertised and shall be so sworn to be suspected as aforesaid the production and examination of the book or books of entries hereby required by him or her to be kept, and inspect and examine the cables described in such permit; and in case any such dealer when so thereunto required as aforesaid shall neglect or refuse to produce to the person named in such warrant as the person on whose oath the same shall have been obtained the book or books containing the entries of such dealer so required to be made therein as aforesaid, or shall neglect to keep any such book or books in which entries containing accounts of the several particulars herein-before required to be entered shall be made, or to permit such inspection or examination as aforesaid, or shall after obtaining such permit for the cutting up of any such cable and before the cutting up of the same neglect to publish such one or more advertisement or advertisements relative thereto as is herein-before directed and required, the dealer or dealers so offending in all or any of the particulars herein-before mentioned shall forfeit and pay for such offence, being his her or their first offence, any sum not exceeding twenty pounds nor less than ten pounds, and for every second or further offence any sum not exceeding fifty pounds nor less than twenty pounds, one half of which penalty shall on conviction before any justice of peace or magistrate residing near as aforesaid be paid to the informer, and the other half to the poor of the parish or township in which such offences shall be committed; and in case any of the penalties by this Act imposed shall not be paid, with the charges incident to the conviction, immediately upon such conviction, the same shall and may be levied by warrant under the hand and seal of such justice of the peace or magistrate upon the goods and chattels of any such offender or offenders; and in case no sufficient distress shall be found then every such offender or offenders shall and may be committed by any such justice of the peace or magistrate as aforesaid to gaol, in case of any first offence for the space of six calendar months, and in case of any second or further offence for the space of twelve calendar months, unless the said penalty and the charges shall be sooner paid.

Inspection of such Accounts may be demanded by Parties interested.

Penalty on Dealers for Neglect.

XIX. And be it further enacted, That from and after the first day of *August* one thousand eight hundred and nine all manufacturers of anchors and kedge anchors shall place his her or their name or names together with a progressive number and also the weight of the anchor in legible characters upon the crown and also upon the shank under the stock of each anchor which he she or they shall manufacture, and shall also place his her or their name or names together with a number and also the weight of the kedge anchor upon the crown and also upon the shank near to the stock of every kedge anchor which he she or they shall manufacture, and in case any such manufacturer shall neglect to place such name number and weight in the manner herein-before directed and required every such person or persons so offending shall, on conviction before any justice of the peace or magistrate on the oath of one credible witness or on the confession of the party so offending, forfeit and pay any sum not exceeding five pounds nor less than forty shillings, one half of which penalty shall be paid to the informer and the other half to the poor of the parish or township in which such offence shall be committed.

Manufacturers shall put Marks on Anchors and Kedge Anchors.

XX. 'And for the more easy and speedy conviction of offenders against 'this Act,' Be it further enacted, That all and every justice and justices of the peace before whom any person shall be convicted of any offence against this Act, shall and may cause the conviction to be drawn up according to the following form; *videlicet*:

Form of Conviction.

'BE it Remembered, That on the day of in 'the year of our Lord *A. B.* is convicted before me

No. XXVI. 49 Geo. III. c. 122.

'[*or*, us] one [*or*, two, *as the case may be*] of his Majesty's 'justice of the peace for the [*here specify the offence, the 'time and place when and where committed, as the case may be*] contrary to 'an Act passed in the forty-ninth year of the reign of King *George* the 'Third, intituled [*here insert the title of this Act*]. Given under my 'hand and seal [*or*, our hands and seals] the day and year first above 'written.'

And no *certiorari* or other writ or process for the removal of any such conviction or any proceedings thereon into any of his Majesty's courts of record at *Westminster* shall be allowed or granted.

Appeal to General Quarter Sessions.

XXI. And be it further enacted, That it shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace before-mentioned of any offence or offences against this Act within three calendar months next after such conviction, to appeal to the justices of the peace assembled at the general quarter sessions holden for the county city or place where the matter of appeal shall arise, first giving ten days' notice of such appeal to the person or persons appealed against and of the matter thereof, and entering into a recognisance before some justice of the peace for such county city or place with two sufficient sureties conditioned to try such appeal and for abiding the determination of the court therein; and such justices at the general quarter sessions shall, upon due proof of such notice having been given and recognisances entered into, hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction and award such costs to either party as to them shall seem just and reasonable, and the decision of the said justices therein shall be final binding and conclusive; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form only or be removed by *certiorari* or any other writ or process whatsoever into any of his Majesty's courts of record at *Westminster* or elsewhere, any law or statute to the contrary thereof in anywise notwithstanding.

XXII. [Inhabitants competent witnesses.]

XXIII. [Offences may be tried where articles found, or if sold in foreign parts where offenders may reside.]

XXIV. [This Act shall not affect statute 48 Geo. III. c. 130.]

Nor shall affect Statute 48 Geo. 3. c. 104.

XXV. Provided also, That nothing in this Act contained shall extend or be construed to extend to repeal take away or alter any of the clauses powers or provisions contained in an Act of Parliament made in the forty-eighth year of the reign of his present Majesty, intituled *An Act for the better Regulation of Pilots and of the Pilotage of Ships and Vessels navigating the* British *Seas*, but that the said Act shall remain in full force as if this Act had not passed.

XXVI. [Reservation of the rights of the High Court of Admiralty.]

XXVII. [Reservation of the rights of the Crown and of lords of manors.]

XXVIII. [Reservation of the rights of the Trinity House of *Deptford Strond*.]

XXIX. [And of the rights of the Trinity Houses of *Kingston*, *Newcastle* and *Scarborough*.]

XXX. [And of the rights of the city of *London*.]

XXXI. Provided also, and be it hereby further enacted, That nothing in this Act contained shall extend or be construed to extend to those parts of the United Kingdom of *Great Britain* and *Ireland* called *Scotland* and *Ireland*.

XXXII. [Regulations of 12 *Anne*, stat. 2. c. 18. as to adjusting and recovering quantum of salvage extended to cases of salvage where sailors have acted under authority of a magistrate or the captain, &c. of the vessel in distress.]

" Publick Act, § 33."

Continuance of the Act.

XXXIV. And be it further enacted, That this Act shall continue in force for seven years from the passing hereof.

SCHEDULE to which this Act refers. No. XXVI.

ON the day of in the year of our Lord before me at in the county of [*ship's name*] *A. B.* [*here insert the names of the salvors against and name the stores and other articles;* (id est) *anchors and cables, &c. as the case may be*] certain goods and merchandizes lately found and taken possession of and belonging to the said ship, whereof was master, and also against the said master and the owners [*or if the owners alone appear by themselves or agents then leave out the master's name*] of the said goods and merchandize in a cause of salvage. [*Master's name.*] On which day appeared personally of and of who produced themselves as sureties for the said the master and for the owners of the said goods and merchandize, and submitting themselves to the jurisdiction of the High Court of Admiralty of *England*, bound themselves their heirs executors and administrators for the said master and owners of the said goods and merchandize in the sum of of lawful money of *Great Britain* unto the said to answer such salvage and expences or the value of the goods, as the case may be, as shall be herein-after decreed by the said court according to the tenor of the Act in that case made and provided; and unless they shall do so, they hereby consent that execution shall issue forth against them their heirs executors and administrators goods and chattels, wherever the same shall be found, to the value of the sum above-mentioned.

This bail was duly taken acknowledged and received at the time and place above-written, before me the undersigned commissioner, and I do believe and consider the persons above-mentioned sufficient security for the said sum of

49 Geo. III. c. 122. [See Sec. 10.]

[No. XXVII.] 52 George III. c. 39.—An Act for the more effectual Regulations of Pilots, and of the Pilotage of Ships and Vessels on the Coast of *England*. (1.)—[20*th April* 1812.]

52 Geo. III. c. 39.

XXVI. PROVIDED always and be it further enacted, That no owner or master of any ship or vessel shall be answerable for any loss or damage, nor shall any owner or owners of any ship or vessel or consignee of goods be prevented from recovering any loss or damage upon any contract of insurance of the same or upon any other contract relating to any ship or vessel or any cargo on board the same, by reason of no pilot being on board of any such ship or vessel, unless it shall be proved that the want of a pilot shall have arisen from any refusal to take a pilot on board or from the wilful neglect of the master of the ship or vessel in not heaving-to or using all practicable means consistently with the safety of the vessel for the purpose of taking on board any pilot who shall be ready and offer to take charge of such ship or vessel.

Owners or Masters of Ships not answerable for Loss, nor Consignee prevented from recovering Insurance, for want of Pilots, &c.

XXVII. Provided also and be it further enacted, That no owner of any ship or vessel shall be liable in any such case for any loss or damage beyond the value of such ship or vessel and her appurtenances and the freight due or to grow due for and during such voyage wherein such loss or damage may happen or arise.

Owners not liable for more than Value of Ship and Freight.

XXVIII. Provided always and be it further enacted, That nothing in

Proviso for Ships of his Majesty;

(1.) The provisions of this Act, so far as they regard the regulations and appointment of Pilots, are too minute and limited in their object to fall within the design of the present work. The Act repeals a preceding Act of 48 Geo. 3. c. 104. "For the better Regulation of Pilots, and of the Pilotage of Ships and Vessels navigating the British Seas." The sections which are selected appear to be of more general importance.

No. XXVII. 52 Geo. III. c. 39.

this Act contained shall extend or be construed to extend to any ships or vessels belonging to his Majesty his heirs and successors as to their being compelled to take pilots on board.

and for Vessels not exceeding 60 Tons.

XXIX. Provided always and be it further enacted, That none of the clauses provisoes penalties or regulations of this Act shall extend or be construed to extend to any vessel not exceeding the burthen of sixty tons, having *British* registers, nor to any master or owner of any such vessel in respect thereof or of the navigating of the same in any channel river port or place whatever.

Owners not liable for Loss arising from Incompetency of Pilots, &c.

XXX. (2.) Provided always and be it further enacted, That no owner or master of any ship or vessel shall be answerable for any (3.) loss or damage, nor shall any owner or owners of any ship or vessel or consignee of goods be prevented from recovering any loss or damage upon any contract of insurance of the same or upon any other contract relating to any ship or vessel or any cargo on board the same for or by reason or means of any neglect default incompetency or incapacity of any pilot taken on board of any such ship or vessel under or in pursuance of any of the provisions of this Act. (4.)

Remedy by Civil Action.

XXXI. And be it further enacted, That nothing in this Act contained shall be construed to extend to deprive any persons of any remedy by civil action against pilots or other persons which they might have had if this Act had not been passed. (5.)

Masters of Vessels piloted by any other than licensed Pilot.

Penalty.

LIX. And be it further enacted, That the master of every ship or vessel (6.) which shall be piloted or conducted by any other person than a duly licensed pilot within any limits for which pilots have been or shall be appointed by any lawful authority shall forfeit double the amount of the sum which would have been demandable for the pilotage of such ship or vessel, and shall likewise forfeit an additional penalty of five pounds for every fifty tons burthen of such ship or vessel, if the corporation of Trinity House of *Deptford Strond*, as to cases in which pilots licensed by or under the said corporation shall be concerned, or the said lord warden for the time being or his lieutenant for the time being, as to all cases in which the Cinque Port pilots shall be concerned, shall think it proper that the person prosecuting should be at liberty to proceed for the recovery of such additional penalty and certify the same in writing: Provided always,

Exception.

that nothing in this Act shall extend to subject to penalties any master of any ship or vessel (not anchoring within the limits of any port or place for which pilots are or shall be appointed) who shall act himself as pilot in passing up and down the *English Channel* or elsewhere in passing by any part of the coast of *England* in the course of any voyage or within the limits of the port or place to which his ship belongs, not being a port or place in relation to which provision hath heretofore been

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(2) This section does not apply to Vessels having on board Pilots appointed for other places than those expressly named in the preamble or provision of that Act. Attorney-General *v.* Case. 3 Price, 302.

Where that Act does apply, the Crown is equally bound with the subject, although not named. 3 Price, 302.

(3.) This does not confine the exemption to loss or damage happening to the piloted ship and cargo, but extends to damages done by that ship to others. Ritchie *v.* Bowsfield, 7 Taunt. 309.

(4.) An owner or master of a vessel is in no case answerable for an accident, occasioned to another ship, provided he has a Pilot on board. Nor is it necessary to prove, in an action brought against such owner, that the injury arose from the incompetency of his Pilot. Bennet *v.* Maita, 1 Moore, 4. S. C. 7 Taunt. 258.

(5.) In Camthers *v.* Sidebottom, East. 1815. (not reported at the time of printing this sheet), it was ruled that the Underwriters on a Policy of Insurance are answerable for a loss occasioned by the neglect or want of skill of a Pilot appointed under a local Act. A case had been previously argued in the Exchequer (the Attorney-General *v.* Case) upon the question whether the owners of a ship are liable for an injury done to another vessel by the neglect or misconduct of such Pilot, upon which no decision has been given; but the question seems to be decided by Camthers *v.* Sidebottom, as involving the general principle, that the acts of a Pilot so appointed are not imputable to the owners of a ship.

(6.) Coasting vessels, not within the 52 Geo. 3. c. 39. are compellable to take a Pilot on board, on entering rivers within the limits of a jurisdiction having authority to appoint and license Pilots, and the exemption in the Act is not confined to coasters using the navigation of the river Thames alone. Usher *v.* Lyon. 2 Price 118.

made by any Act or Acts of Parliament or by any charter or charters for the appointment of pilots, or who shall employ any person as a pilot, or who shall act himself as such for the conduct of his ship or vessel in any case where and so long as a duly qualified pilot shall not offer assistance or make a signal for that purpose: Provided also that this Act shall not extend or be construed to extend to hinder any persons from assisting any ship or vessel in distress at any time or place, nor shall subject such persons or any master of any ship or vessel employing such persons to the penalties of this Act in respect of such assistance given during the distress of such ship or vessel, or in consequence thereof, or under any circumstances which shall have rendered it necessary for such master to avail himself of the best assistance which at the time could be procured; any thing herein contained to the contrary thereof in any wise notwithstanding. Proviso.

LXVI. And be it further enacted, That all Acts of Parliament and all clauses provisions powers authorities regulations penalties and forfeitures contained in any Act which in any manner relate to the regulation of pilots or pilotage within any river port or harbour or within any local limits specified in any such Act clause or provision, and in which any reference is made to the said Act of the forty-eighth year aforesaid or in any manner apply thereto or vary or alter any of the provisions thereof as to pilots or pilotage within any such limits, shall continue in full force notwithstanding the repeal of the said Act of the forty-eighth year aforesaid, and be deemed to refer and apply to this Act and shall be so construed as if the same were particularly referred to in this Act; any thing in this Act to the contrary notwithstanding. All Acts relating to Regulation of Pilots extended to Act. 48 Geo. 3. c. 104.

LXVII. And be it further enacted, That all the provisions clauses penalties and forfeitures contained in an Act passed in the eighth year of the reign of Queen *Elizabeth*, or any other Act or Acts made and in force for the preservation of beacons and sea marks, shall extend and be construed to extend to all vessels duly appointed to exhibit lights therein for the preservation of ships and vessels at sea and to all persons removing injuring or destroying such vessels or lights; which offences may be laid and tried in any county in *England*. Preservation of Beacons, 8 Eliz. c. 13.

LXVIII. And be it further enacted, That every person who shall ride by make fast to or remove or wilfully or negligently run down or run foul of any vessel appointed or placed to exhibit lights, or any buoy or beacon belonging to the said corporation of Trinity-house of *Deptford Strond*, or belonging to or placed by any other corporation having lawful authority to place the same, shall forfeit for every such offence any sum not exceeding fifty pounds nor less than ten pounds, together with the expence of replacing or making good any damage occasioned by such misconduct. Riding by, &c. any Beacon. Penalty.

[No. XXVIII.] 53 George III. c. 36.—An Act to amend an Act, passed in the Forty-third Year of his present Majesty, for regulating the Vessels carrying Passengers to his Majesty's Plantations and Settlements Abroad.—[15*th April*, 1813.]

[No. XXIX.] 53 George III. c. 111.—An Act for the more easy manning of Ships and Vessels employed in the *Southern* Whale Fishery.—[10*th July*, 1813.]

[No. XXX.] 53 George III. c. 159.—An Act to limit the Responsibility of Ship Owners, in certain Cases.—[21*st July*, 1813.]

WHEREAS it is of the utmost consequence and importance to promote the increase of the number of ships and vessels belonging to

No. XXX.
53 Geo. III. c. 159.

the United Kingdom registered according to law, and to prevent any discouragement to merchants and others from being interested therein: And whereas it is expedient to amend an Act made in the seventh year of the reign of his late Majesty King *George* the Second, intituled *An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners;* and also another Act made in the twenty-sixth year of the reign of his present Majesty, intituled *An Act to explain and amend an Act made in the Seventh Year of his late Majesty's Reign, intituled 'An Act to settle how far Owners of Ships shall be answerable for 'the Acts of Masters or Mariners,' and for giving a further Relief to the Owners of Ships;* and that other provisions should be made in respect thereof; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That no person or persons who is are or shall be owner or owners or part owner or owners of any ship or vessel shall be subject or liable to answer for or make good any loss or damage arising or taking place by reason of any act neglect matter or thing done omitted or occasioned without the fault or privity of such owner or owners which may happen to any goods wares merchandize or other things laden or put on board the same ship or vessel after the first day of *September* one thousand eight hundred and thirteen, or which after the said first day of *September* one thousand eight hundred and thirteen may happen to any other ship or vessel or to any other goods wares merchandize or other things being in or on board of any other ship or vessel further than the value of his or their ship or vessel, and the freight due or to grow due for and during the voyage which may be in prosecution or contracted for at the time of the happening of such loss or damage. (1.)

7 Geo. 2. c. 15.
26 Geo. 3. c. 86.

Owners of Ships shall not be liable to make good any Damage occasioned without their Fault, further than the Value of their Vessels.

II. And be it further enacted, That the value of the carriage of any goods wares or merchandize belonging to the owner or any of the owners of such ship or vessel, and also the hire due or to grow due under or by virtue of any contract whether made by or on the behalf of his Majesty, or by or on the behalf of any other person or persons or any body politic or corporate whatsoever, except only such hire as in the case of a ship or vessel hired for time may not begin to be earned until the expiration of six calendar months after the happening of such loss or damage shall be deemed and taken to be and shall be considered as freight within the intent and meaning and for the purposes of this Act, and also of the said Acts of Parliament made in the seventh year of the reign of his late Majesty King *George* the Second, and in the twenty-sixth year of the reign of his present Majesty.

Value of the Carriage of Goods, &c. to be considered as Freight.

III. And be it further enacted, That in case any such loss or damage shall arise or happen by more than one separate and distinct accident act neglect or default, or on more than one occasion in the course or progress of a voyage or after the end of any voyage and before the commencement of another voyage, each and every such loss or damage shall be paid compensated and satisfied according to the provisions of this Act in such and the same way and to the same extent as if no other loss or damage had happened or arisen during the same voyage or after the end of any voyage and before the commencement of another voyage.

Providing for separate Losses.

IV. Provided always and be it further enacted, That nothing herein contained shall lessen or take away any responsibility to which any masters or Mariners of such Ships.

Act not to take away Responsibility of Master

(1.) In action against several defendants, as ship-owners, for damage sustained by the loss of goods laden on board their ship: It was held, that by the 53 Geo. 3. c. 159. sec. 1. they were not liable in that character beyond the value of the ship and freight, due or to grow due, although the loss was occasioned by the misconduct of one of the defendants, who was both master and part owner; secondly, that the value of the ship was to be calculated at the time of the loss, and not at the time of the commencement of the voyage; and, thirdly, that in calculating the value of freight due or to grow due, money actually paid in advance was to be included. Wilson v. Dickson, 2 B. & A. 2.

ter or mariner of any ship or vessel may now by law be liable, notwithstanding such master or mariner may be an owner or part owner of his ship or vessel.

V. Provided also and be it further enacted, That nothing herein contained shall extend or be construed to extend to the owner or owners of any lighter barge boat or vessel of any burthen or description whatsoever used solely in rivers or inland navigation or any ship or vessel not duly registered according to law.

Act not to extend to Owners of Lighters, &c.

VI. Provided also, and be it further enacted, That nothing in this Act contained shall extend to prevent any action or suit being brought or instituted or proceeded in in any court of competent jurisdiction by any person or persons who shall have suffered any loss or damage within the intent and meaning of this Act, against any owner or part owner of any ship or vessel, notwithstanding any other person or persons may have suffered any loss or damage by the same accident act neglect or default or on the same occasion; but that all such actions and suits shall and may be brought or instituted and proceeded in in such manner as the same might have been brought or instituted or been proceeded in if this Act had not been made; subject nevertheless to such order as any court may think fit to make, to restrain proceedings in such action or suit on special circumstances as justice and equity shall require.

Actions may be brought for Damage by Persons suffering Loss, though others have sustained Loss by the same Accident.

VII. And be it further enacted, That if several persons shall suffer any loss or damage in or to their goods wares merchandizes ships or otherwise by any means for which the responsibility of any owner or owners is limited by this Act as aforesaid, and the value of the ship or vessel with all her appurtenances and the amount of the freight estimated as herein is mentioned shall not be sufficient to make full compensation to all and every the person and persons suffering such loss and damages, it shall and may be lawful to and for the person or persons liable to make satisfaction for such loss or damage or any one or more of them, on behalf of himself herself or themselves and the other owner or owners of the same ship or vessel, to exhibit a bill in any court of equity having competent jurisdiction against all the persons who shall have brought any such action or actions suit or suits as aforesaid and all other persons who shall claim to be entitled to any recompence for any loss or damage arising or happening by the same separate and distinct accident act neglect or default, or on the same occasion to ascertain the amount of the value of the ship or vessel appurtenances and freight, and for payment or distribution thereof rateably amongst the several persons claiming recompence as aforesaid in proportion to the amount of the several losses or damages sustained by such persons so claiming such recompence as aforesaid according to the rules of equity and as the case may require: Provided always, That the plaintiff or plaintiffs in such bill shall annex to such bill an affidavit that he she or they do not directly or indirectly collude with any of the defendants thereto or with any other owner or owners of the same ship or vessel or with any other person or persons, but that such bill is filed for the purposes only of justice and to obtain the benefit of the provisions of this Act; and that the several persons named as defendants to the said bill are as the person or persons making such affidavit verily believes all the persons claiming to be entitled to recompence for loss or damage sustained by the same accident act neglect or default or on the same occasion; and that all such defendants do claim such recompence and to be entitled to proportions of the value of such ship or vessel appurtenances and freight, and that no other person claims to be entitled to any proportion thereof under the provisions of this Act; and that the amount of the value of such ship or vessel appurtenances and freight does not exceed a sum to be specified in such affidavit, and that the several claims made by the defendants to such bill do exceed the amount of the value of such ship or vessel appurtenances and freight; and the plaintiff or plaintiffs in such bill shall on filing such bill apply to the court and obtain an order for the liberty to pay into court the amount of the value of such ship or vessel appurtenances and

Proceedings in case the Value of the Ship, &c. is not sufficient to make Compensation for Damages.

No. XXX. 53 Geo. III. c. 159.

freight as ascertained by such affidavit, and shall pay the same into court according to such order; and no defendant or defendants to such bill shall be compellable to put in any answer thereto until such value shall have been paid into court as aforesaid, unless the court shall for any special cause think fit to order security to be given for the same in such manner as the said court shall think fit, either instead of payment thereof into court as aforesaid or until such court shall make other order to the contrary; and unless such money shall be paid into court as aforesaid, or the said court shall make such order for security as aforesaid, and such security shall be given according to the said order within one month after such bill shall have been filed, such bill shall immediately after the expiration of such month stand dismissed without any motion for that purpose; and the court shall thereupon order the payment of the costs of the said suit to all the defendants who shall then have appeared to such bill; and in case such security shall be given as aforesaid, and such value shall afterwards be ordered to be paid into court, and the same shall not be so paid within the time to be limited by the court, such bill shall also stand dismissed without motion for that purpose, and the said court shall also order costs to be paid to the defendants as aforesaid; and in case any such bill shall at any time be dismissed after any such value shall have been paid into court or such security given as aforesaid, such court shall direct the money so paid into court, if any, to be paid to the several claimants defendants to such bill, who shall appear to the court to be entitled to proportions thereof in such manner as to such court shall appear to be just, and shall order any security so to be given as aforesaid to be put in suit and the money to be recovered thereupon to be paid into court and distributed in like manner; and such payments shall be without prejudice to any action or suit which may be brought or instituted by any other person or persons not party or parties to such bill for any such loss or damage as aforesaid, although such loss or damage shall have arisen or happened by the same accident act neglect or default, or on the same occasion as the losses or damages for which recompence shall be claimed by the parties defendants to such bill, and all such payments as shall be made under the order of the said court shall be without prejudice to the recovery of the costs in any action or suit which shall have been brought by any such defendant or defendants, unless such costs shall be otherwise provided for by the said court.

If the true Amount of the Value of the Vessel, &c. be not paid the Court shall require further Payment, &c.

VIII. Provided always and be it further enacted, That if it shall appear to the court in which any such bill shall be filed as aforesaid that the money paid into court or for which such security shall be given as aforesaid is not the true amount of the value of such ship or vessel appurtenances and freight, the said court shall order such further sum of money to be paid into court or such further security to be given as to the said court shall seem proper; and the said court shall also at any time, if the said court shall see fit, order security to be given for the costs of such suit as to the said court shall seem necessary and just; and if such further sum of money shall not be paid or such further or other security shall not be given as aforesaid within the time to be limited by the said court for that purpose, such bill shall stand dismissed without any order for that purpose: and the said court shall thereupon order the payment of the costs of such suit to the several defendants by the plaintiffs and give the proper directions for the application of any money paid into court or due on any security given in such suit to answer the demands of the several defendants in such suit as to such court shall appear to be just.

In Abatement of Suits how Costs to be paid.

IX. And be it further enacted, That if after any suit shall have been instituted the same shall become abated or imperfect in the whole or in part and the same shall not be revived or made perfect within the time to be limited by the court for that purpose, such suit and all proceedings therein shall stand dismissed without any motion for that purpose; and the said court shall order the costs of such suit to be paid to the defendants thereto or to the representatives of any who shall be then dead; and if the plaintiff or plaintiffs in any such suit or any of them

shall be then dead, such costs as shall not be otherwise paid shall be a charge on the assets of such deceased plaintiff or plaintiffs and shall be recoverable as a debt by simple contract.

X. And be it further enacted, That the court in which any such bill shall be filed as aforesaid shall be and is hereby authorised and empowered to take all such measures as to such court shall seem just for ascertaining the value of such ship or vessel appurtenances and freight, the amount of the losses or damages claimed by the defendants thereto respectively, and all such matters and things as shall be necessary for the purposes of justice in such suit and for payment and distribution of the value of such ship or vessel appurtenances and freight amongst the several persons entitled thereto and generally to do therein as shall appear to be just; and the costs of all such proceedings shall be paid by the plaintiff or plaintiffs in such suit, unless such court shall think fit otherwise to order.

Court to take Measures for ascertaining the Value of Vessels, &c.

XI. And be it further enacted, That all costs to be paid by the plaintiff or plaintiffs in any such suit in a court of equity as aforesaid shall be taxed and settled as between attorney and client, if the court shall think fit so to order.

Costs to be taxed.

XII. Provided also and be it further enacted, That if any such bill shall be filed and shall afterwards be dismissed by reason of any such default of the plaintiff or plaintiffs therein as herein-before provided or under any order of the said court for that purpose no new bill shall be filed by the same plaintiff or plaintiffs or his her or their representatives, or by any other part owner or part owners of the same ship or vessel, unless the court in which such bill shall have been filed shall order such dismission to be without prejudice to the filing of a new bill either absolutely or under such conditions as to the said court shall seem just.

No new Bills to be filed but under certain Circumstances.

XIII. And be it further enacted, That if any money shall be paid into any such court of equity as aforesaid in respect of the value of any such ship or vessel appurtenances or freight, all interest and profit made thereof whilst such money shall remain in court shall be considered as belonging to the parties in such suit who shall appear to be entitled to the principal money or proportions thereof respectively and shall be divided and distributed accordingly; and if security shall be given for such value or any part thereof, the same shall bear interest and such interest shall be applied in like manner.

Interest of Money paid into Court to belong to the Parties entitled to the Principal.

XIV. And be it further enacted, That if any such bill shall be filed as aforesaid by any part owner or part owners of any ship or vessel on behalf of himself herself or themselves and the other part owners, such bill shall bind all such other part owners and their representatives in the same manner as they would have been bound if parties plaintiffs to such bill; and if after the filing of any such bill any of the plaintiffs or other part owners shall die, the right of action against such part owners so dying founded on any tort or wrong shall not thereby be lost, but it shall and may be lawful to proceed against the respective representatives of the part owners so dying, in the same manner as might have been if such right of action had been founded on contract.

Any Bill filed by one Part Owner, to be equally binding on the others.

XV. And be it further enacted, That if any suit for any such loss or damage as aforesaid shall be instituted or depending in any court competent to act as a court of equity for the purposes of this Act, such court shall and is hereby authorised and empowered to proceed in such suit for such purposes in the same manner and under the same regulations and with the same powers as are herein given to courts of equity, so far as the same are applicable to the nature of such court and the forms of proceedings therein, and such court shall use all such means as a court of equity is by this Act empowered to use for the purposes of this Act.

Any Court competent to act as Court of Equity, to be deemed as such for Purpose of Act.

XVI. And be it further enacted, That all and every sum and sums of money which shall be paid for or towards or on account of any loss or damage in respect whereof the responsibility of the owners of any ship or vessel is limited by this Act or by the said Acts or either of them, or any costs incurred in relation thereto, shall and may be brought into ac-

Money paid for Damage how to be accounted for.

No. XXX. 53 Geo. III. c. 159.

count among the part owners of the same ship or vessel in such and the like manner as money disbursed for the use thereof.

XVII. And be it further enacted, That this Act shall be deemed and taken to be a publick Act and shall be judicially taken notice of as such by all judges justices and other persons whomsoever without the same being specially pleaded.

Publick Act.

[No. XXX. *a.*] 54 George III. c. 59.—An Act to allow Ships taken and condemned for being used in carrying on the Slave Trade to be registered as *British*-built Ships.—[*27th May* 1814.]

54 Geo. III. c. 59.

Ships condemned for Breach of the Law relating to the Slave Trade to be entitled to the Privileges of Prize Ships.

WHEREAS it is expedient that ships and vessels condemed for breach of any law now in force relating to the slave trade should be entitled to all the privileges and advantages of *British* ships in like manner in every respect as ships and vessels taken and condemned as prizes of war; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That all ships or vessels whether *British* or foreign which shall at any time after the passing of this Act become forfeited under any of the provisions of any Act or Acts of Parliament now in force or which may hereafter be passed for the prevention abolition or regulation of the slave trade and be adjudged to be forfeited in any court of record in *Great Britain*, or which shall be condemned as forfeited in any court of Admiralty or Vice-Admiralty in any part of his Majesty's dominions for any offence in relation to the slave trade, shall from and after such judgment or condemnation respectively be entitled to a certificate of registry as a *British* ship and thereupon have and enjoy all the privileges and advantages of *British*-built ships and vessels in like manner with ships and vessels taken by his Majesty's ships of war and condemned as lawful prize of war in courts of Admiralty: Provided always, That all such ships and vessels shall be subject to the same duties and regulations and shall be registered in the same manner and form and subject to the same conditions and restrictions penalties and forfeitures and shall be in like manner owned and navigated as ships and vessels condemned as lawful prize are directed and required to be in order to their obtaining *British* registers and enjoying the privileges of *British* ships owned registered and navigated according to law.

[No. XXXI.] 54 George III. c. 158.—An Act to continue, for One Year, certain Acts for the better Prevention and Punishment of Attempts to seduce Persons serving in his Majesty's Forces by Sea or Land from their Duty and Allegiance to his Majesty, or to incite them to Mutiny or Disobedience.—[*29th July*, 1814.]

[No. XXXII.] 54 George III. c. 159.—An Act for the better Regulation of the several Ports, Harbours, Roadsteads, Sounds, Channels, Bays, and Navigable Rivers, in the United Kingdom; and of his Majesty's Docks, Dock Yards, Arsenals, Wharfs, Moorings, and Stores therein; and for repealing several Acts passed for that Purpose.—[*29th July* 1814.]

54 Geo. III. c. 159.

19 G. 2, c. 22.

WHEREAS an Act passed in the nineteenth year of the reign of his late Majesty King *George* the Second, intituled *An Act for the better*

No. XXXII.
54 Geo. III. c. 159.

Preservation of Havens, Roads, Channels and Navigable Rivers, within that Part of Great Britain *called* England: And whereas another Act passed in the ninth year of the reign of his present Majesty, intituled *An Act for repealing so much of an Act passed in the Tenth Year of her late Majesty Queen* Anne *as relates to the Harbour Moorings of the Royal Navy, and for the more effectual Preservation of such Harbour Moorings and Punishment of Persons guilty of stealing or embezzling his Majesty's Naval Stores, or of Forgery or Perjury in relation to Seamen's Wages*: And whereas another Act passed in the fifty-first year of the reign of his present Majesty, intituled *An Act for the better Security of his Majesty's Naval Arsenals in the River* Medway *and* Portsmouth *and* Hamoaze *Harbours, and of his Majesty's Ships and Vessels lying at and resorting to the same*: And whereas the provisions of the said several recited Acts have not been found adequate to the purposes for which the same were made; and therefore it is expedient that so much of the said recited Act of the ninth year of the reign of his present Majesty as relates to the harbour moorings of the royal navy, and also so much of the said Act of the tenth year of the reign of her late Majesty Queen *Anne* as relates to the said harbour moorings should be repealed, and other and more effectual provisions made in lieu thereof; and also that the said recited Act of the nineteenth year of the reign of his late Majesty King *George* the Second should be extended as herein-after mentioned; and also that the said recited Act of the fifty-first year of the reign of his present Majesty should be repealed; and that such further and other provisions should be made as herein-after mentioned, for the better regulation and protection of the several ports harbours havens roads roadsteads sounds channels creeks bays and navigable rivers in the United Kingdom, and of his Majesty's docks dock yards arsenals wharfs moorings and stores therein: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act so much of the said recited Act of the ninth year of the reign of his Majesty as relates to the harbour moorings of the royal navy; and also so much of the said Act of the tenth year of the reign of her late Majesty Queen *Anne* as relates to the said harbour moorings; and also that the said recited Act of the fifty-first year of the reign of his present Majesty, shall be and the same are hereby respectively repealed.

9 Geo. 3. c. 30.

51 Geo. 3. c. 73.

So much of 9 Geo. 3. c. 30. as relates to the Harbour Moorings of the Navy, and also so much of 10 A. c. 17. as relates to the said Harbour Moorings, and 51 Geo. 3. c. 73. repealed.

II. And be it further enacted, That it shall be lawful for the lord high admiral or three or more of the commissioners for executing the office of lord high admiral of the United Kingdom of *Great Britain* and *Ireland* for the time being, and he and they is and are hereby authorised and empowered from time to time as occasion shall require to make such rules orders and regulations in writing under his or their respective hand or hands or the hand of his or their secretary, as he or they shall think proper for the preservation of his Majesty's moorings and for the mooring anchoring and placing of all private ships of war transports and all other private and merchant ships and vessels lighters barges boats and other craft whatsoever in all the ports harbours havens roads roadsteads sounds channels creeks bays and navigable rivers of the United Kingdom so far as the tide flows or reflows, where or near to which his Majesty now hath or where his Majesty his heirs or successors may at any time or times hereafter have any docks dock yards arsenals wharfs or moorings; and harbour masters to be appointed as herein-after mentioned for superintending the same for the purpose of insuring free and safe ingress egress and regress unto into to and from the said ports harbours havens roads roadsteads sounds channels creeks bays and navigable rivers, and to and from his Majesty's said docks dock yards arsenals wharfs and moorings therein; and for that purpose to order and direct such spaces along the sides of over against or near to such docks dock yards arsenals wharfs and moorings as they shall judge necessary to be kept free and open, and to cause the same to be marked out by piles buoys or other sufficient marks, and to order and direct what spaces and distances shall be

Admiralty may establish Regulations for the Preservation of the King's Moorings and for mooring Merchant Ships.

No. XXXII. 54 Geo. III. c. 159.

appropriated to and for the sole use and purpose of moorings for his Majesty's ships and vessels of war and hired armed ships or vessels in his Majesty's service; and also to specify the distances from his Majesty's docks dock yards arsenals wharfs moorings ships and hulks, within which no private ship of war transport or any other private or merchant ship or vessel lighter barge boat or other craft whatever shall be moored anchored or placed, and for all and every or any other the purposes hereinafter mentioned; and from time to time to vary and alter such rules orders and regulations as occasion shall require for the purposes aforesaid; and also from time to time to appoint proper persons to be called *the King's Harbour Masters*, to superintend such ports harbours havens roads roadsteads sounds channels creeks bays and navigable rivers for the purposes aforesaid, and to enforce obedience to all such rules orders and regulations; all which said rules orders and regulations shall upon the making thereof, and also from time to time whenever the same shall in any manner be varied or altered be forthwith printed and published in *The London Gazette*, and being also printed and put upon pasteboard shall be constantly kept hung up in some open and conspicuous part of the custom house or other place of public resort for business in the port harbour or haven for which the same shall be made or where the same shall be directed to be in force, to the intent that the same may be seen and read and copies or extracts taken therefrom by all persons interested therein.

No private Ship to fasten to his Majesty's Moorings.

III. And be it further enacted, That if any private ship of war transport or other private or merchant ship or vessel lighter barge boat or other craft whatsoever, for which no licence so to do shall have been first obtained in writing under the hand of any commissioner of the navy port admiral or other person who shall be duly authorised by the said lord high admiral or three or more of the said commissioners for executing the office of lord high admiral aforesaid, to grant such licences for the time and purpose to be therein particularly specified shall, unless forced thereto by stress of weather or other unavoidable accident, be moored or fastened to any of his Majesty's moorings chains anchors buoys piles ships or hulks, or shall in any manner be moored anchored or placed within any such distances so to be appropriated as aforesaid to and for the sole use and purpose of moorings for his Majesty's ships or vessels of war or hired armed ships or vessels in his Majesty's service or within any such distance so to be specified as aforesaid from his Majesty's docks dock yards arsenals wharfs moorings ships or hulks, or within any such spaces so to be directed to be kept open as aforesaid, or in the fair way or channel or across the stream in any such port harbour haven or navigable river so as to obstruct the passage or entrance into the same, the master or other person being then on board and having the charge or command of any such ship or vessel lighter barge boat or other craft; and in case the proper master of any such ship or vessel lighter barge boat or other craft so being moored fastened anchored or placed shall not happen to be then on board the same, then the owner or owners thereof whether he she or they shall happen to be then on board the same or not; shall forfeit and pay a sum not exceeding the sum of ten pounds for each and every tide which such ship or vessel lighter barge boat or other craft shall stay and remain so moored anchored or placed.

Penalty.

Power to remove private Ships.

IV. And for the prevention of any damage which might otherwise be occasioned to his Majesty's moorings chains anchors buoys piles ships or hulks, and also for the prevention of delay in the public service; Be it enacted, That in case the owner master or other person on board for the time being having the charge or command of any private ship of war transport or other private or merchant ship or vessel lighter barge boat or other craft, which shall be moored or fastened to any of his Majesty's moorings chains anchors buoys ships or hulks, or which shall in any manner be moored anchored or placed within any such distance as aforesaid, so to be appropriated to and for the sole use and purpose of moorings for his Majesty's ships or vessels of war or hired armed ships or

vessels in his Majesty's service, or within any such distance so to be specified as aforesaid from his Majesty's docks dock yards arsenals wharfs moorings ships or hulks, or within any such spaces so to be directed to be kept open as aforesaid, or in the fair way or channel of or across the stream in any such port harbour haven or navigable river so as to obstruct the passage or entrance into the same, shall neglect or refuse to unmoor and to remove any such ship or vessel lighter barge boat or other craft which shall be moored anchored or placed as aforesaid, out of and beyond such spaces and distances as aforesaid and also out of such fair way channel or stream as aforesaid, for the space of one hour next after notice to him or them given in writing or left on board such ship or vessel lighter barge boat or other craft for that purpose by one of his Majesty's naval or dock yard officers; that then it shall be lawful for any person so to be appointed harbour master as aforesaid, and also for any officer belonging to any of his Majesty's ships or vessels of war docks dock yards or arsenals, and for any person or persons acting in his or their aid or assistance, and he and they is and are hereby authorised and empowered to unmoor such ship or vessel lighter barge boat or other craft, and also to remove the same to some proper place out of and beyond such spaces and distances as aforesaid, and also out of such fair way channel or stream; and every such owner master or other person so neglecting and refusing as aforesaid shall for every such offence forfeit and pay the further the sum of ten pounds.

Penalty for Neglect, 10*l.*

V. And whereas it sometimes happens that his Majesty's mooring anchors are hooked by the anchors of private ships of war transports and other private and merchant ships or vessels by accident, and without the default of the owners masters or other persons having the charge or command thereof; but great danger and damage are and may be occasioned by unhooking the same, or by leaving the anchors of such moorings in an unsafe manner or in an improper place; For prevention thereof be it enacted, That whenever any private ship of war transport or other private or merchant ship or vessel shall in any manner either by accident or otherwise hook any of his Majesty's moorings the owner master or other person having the charge or command of such ship or vessel shall not proceed to unhook the same under the penalty of ten pounds, to be paid by every such owner master or other person; but shall forthwith give notice thereof to the king's harbour master commissioner of the navy or other chief officer of his Majesty's dock yard or naval yard, whichever shall be nearest to the place where the same may happen, in order that full and effectual aid and assistance may be forthwith given for the purpose of clearing such private ship of war transport or other private or merchant ship or vessel from such moorings without damage to the same; for which said aid and assistance every such master owner or other person shall pay such reasonable sum of money not exceeding five pounds, as shall be adjudged in a summary way by any commissioner of the navy or justice of the peace, to be recovered in the same manner as any penalty or forfeiture is by this Act directed to be recovered, and with such power of commitment on non-payment thereof as in cases of penalties and forfeitures under this Act.

Notice to be given when his Majesty's Moorings are hooked.

VI. And be it further enacted, That it shall and may be lawful to and for the said lord high admiral or three or more of the commissioners for executing the office of lord high admiral aforesaid for the time being, and he and they is and are hereby authorised and empowered from time to time, by order or notice in writing under his or their respective hand or hands or the hand of his or their secretary, to prohibit the breaming of any ships or vessels lighters barges boats or other craft at any place or places on shore where it may to them seem proper and necessary to prohibit the same, and also to order at what place or places within or near all or any of such ports harbours havens roads roadsteads sounds channels creeks bays and navigable rivers in this kingdom as aforesaid no private ships of war transports or other private or merchant ship or vessel lighter barge boat or other craft shall come or be laden with or having on board thereof any quantity or quantities of gunpowder exceeding five pounds

Places to be appointed for breaming Ships, and for leaving and receiving Gunpowder.

XXII. 24 Geo. III. c. 159.

weight in the whole; and also to appoint fit and proper places either afloat or on shore where all gunpowder exceeding five pounds weight in the whole shall and may be left and deposited by and from or taken and received into any such ships or vessels lighters barges boats or other craft; all which orders notices and appointments of such places shall be notified in the *London Gazette;* and that the master general or principal officers of his Majesty's ordnance or any three of them for the time being shall appoint fit and proper persons there to take in and receive and also to give and deliver out all such gunpowder, and upon the taking in thereof to give receipts for the same and also to grant a certificate to any such owner master or other person of his having left and deposited all such gunpowder, and having made and signed a declaration in writing under his hand of his having so done and that neither he nor any other person or persons to his knowledge or belief had any gunpowder exceeding five pounds weight in the whole then on board such ship or vessel lighter barge boat or other craft as the case may require; which declaration every such master owner or other person is hereby required to make as the case may require, and for which said certificate the sum of one shilling and no more shall be paid; and every such person so to be appointed as aforesaid shall be accountable to the owner or owners of all such gunpowder for the same and shall deliver the same to such owner or owners thereof upon demand on being paid such reasonable sum of money for warehouse room in proportion to the quantity of such gunpowder and the time for which the same shall have been kept as shall be ascertained and fixed either by the said lord high admiral or three or more of the commissioners for executing the office of lord high admiral aforesaid or by the master general and principal officers of his Majesty's ordnance or any three or more of them by any rule order or regulation to be made in that behalf; and that no ship or vessel having or having had any such quantity of gunpowder on board shall be allowed to clear at any custom-house in any port where there shall be any such place so to be appointed as aforesaid without producing and leaving such certificate together with the christian and surname of the pilot (if any) who piloted such ship or vessel into such port at the custom-house of such port; and all and every owner master pilot or other person having the charge or command of any private ship of war transport or other private or merchant ship or vessel lighter barge boat or other craft which shall come arrive or be (except in cases of stress of weather) within any of the distances so to be specified as aforesaid having on board thereof any quantity or quantities of gunpowder exceeding five pounds weight together in the whole, or which having come in under stress of weather shall not unship and deliver all such gunpowder within the space of twenty-four hours next after the ceasing of such weather (and thereof forthwith give notice at the custom-house to excuse the production of such certificate) shall forfeit and pay the sum of five pounds for each and every five pounds weight of gunpowder which shall be found or which shall have been on board any such ship or vessel lighter barge boat or other craft within any of the distances so to be specified as aforesaid, and so in proportion for any greater or less quantity; and every such pilot who shall wilfully and knowingly offend in the premises and shall be thereof lawfully convicted shall for ever thereafter be rendered incapable of acting as a pilot.

Penalty.

Penalty on breaming Ships, except at appointed Places.

VII. And be it further enacted, That no private ship of war transport or other private or merchant ship or vessel lighter barge boat or other craft whatever shall be breamed afloat in any of the ports harbours or havens or other places of this kingdom for which any such rules orders or regulations shall be made as aforesaid or in which the same shall be in force nor at any place on shore where such breaming shall have been prohibited as aforesaid, upon pain that every person offending therein shall for every such offence forfeit and pay the sum of five pounds; and that no fire shall be kept on board of any such ship or vessel lighter barge boat or other craft in any such port harbour or haven between the hours of eleven in the evening and five in the morning, from the first day

of *October* to the thirty-first day of *March* inclusive; nor between the hours of eleven in the evening and four in the morning, from the first day of *April* to the thirtieth day of *September* inclusive in every year; upon pain that every owner master or other person having the charge or command of any such ship or vessel lighter barge boat or other craft shall for every such offence forfeit and pay the sum of five pounds; and that no pitch tar rosin turpentine grease tallow oil or any other combustible matter whatsoever shall be boiled or heated on board any such ship or vessel lighter barge boat or other craft whatsoever within the distance of two hundred and fifty yards from any of his Majesty's ships or vessels of war or hired armed ships or vessels in his Majesty's service in any of the ports harbours havens roads roadsteads creeks sounds bays or navigable rivers as aforesaid where the same may happen to be; nor within the distance of two hundred and fifty yards from any of his Majesty's docks dock yards arsenals or wharfs, upon pain that every owner master or other person having the charge or command of any such ship or vessel lighter barge boat or other craft shall for every such offence forfeit and pay the sum of five pounds.

Penalty on keeping Guns shotted.

VIII. And be it further enacted, That if any owner master or other person having the charge or command of any private ship of war transport or other private or merchant ship or vessel whatsoever shall while such ship or vessel shall lie or be in any of such ports harbours havens roads roadsteads sounds channels creeks bays and navigable rivers within the United Kingdom as aforesaid, keep any gun or guns of and belonging to such ship or vessel shotted or loaded with ball, or shall fire or discharge or cause or permit to be fired or discharged any gun or guns on board such ship or vessel lying therein before sun-rising or after sun-setting, every such owner master or other person as aforesaid, shall for every such gun so kept shotted or loaded forfeit the sum of five shillings, and for every gun so fired or discharged the sum of ten shillings.

Power to enter private Ships to search for Gunpowder, &c.

IX. And for the better discovery of the offenders against this Act and for the purpose of bringing them to punishment, Be it further enacted, That it shall and may be lawful to and for any such harbour master and also for any officer belonging to any of his Majesty's ships or vessels of war docks dock yards or arsenals, and also for any person or persons in their or any or either of their aid or assistance at any hour between sun-rising and sun-setting to go and enter into and on board of any such ship or vessel lighter barge boat or other craft in order to search for gunpowder guns shotted and the heating and melting such combustible matters aforesaid within the limits wherein the same are by this Act prohibited; and if the owner master or other person then on board having the charge or command of any such ship or vessel lighter barge boat or other craft shall upon demand in that behalf made refuse to permit or shall not permit any such person or persons as aforesaid to come and enter into and on board of any such ship or vessel lighter barge boat or other craft and to make a due and proper search and examination for the purposes aforesaid, every such owner master or other person as aforesaid shall for every such offence forfeit the sum of ten pounds.

Penalty, 10*l.*

None to sweep for his Majesty's Stores but licensed Persons.

X. And for the better prevention of the embezzlement of his Majesty's stores, Be it enacted, That no person or persons not being in his Majesty's service or employed in his Majesty's dock yards or arsenals and in the regular performance of his duty, or not being authorised so to do for his Majesty's use by licence under the hand of some commissioner of his Majesty's Navy, which said licence any such commissioner is hereby empowered to grant and also to revoke at his will and pleasure, shall on any account or pretence whatsoever creep or sweep for anchors cables ropes rope yarns or other stores lost or supposed to be lost in any of the ports harbours havens roads roadsteads sounds channels creeks bays and navigable rivers of this kingdom as aforesaid within the distance of one hundred yards from any of his Majesty's ships or vessels of war or hired ships or vessels in his Majesty's service or from any moorings belonging to his Majesty or within any such distance so to be marked as aforesaid, upon pain of forfeiting for every such offence the sum of ten pounds.

Penalty, 10*l.*

No. XXXII. 54 Geo. III. c. 159.

Punishing Persons letting Ballast or Rubbish go into the Sea.

XI. And be it further enacted, That if the owner master or other person having the charge or command of any private ship of war transport or other private or merchant ship or vessel lighter barge boat or other craft whatsoever, or any person working any quarry mine or pit near to the sea or to any such harbour haven or navigable river as aforesaid, or any other person or persons whatsoever shall cast throw empty or unlade or cause or procure to be cast thrown emptied or unladen either from or out of any such ship or vessel lighter barge boat or other craft or from the shore, any ballast stone slate gravel earth rubbish wreck or filth into any of such ports roads roadsteads harbours havens or navigable rivers of this kingdom as aforesaid so as to tend to the injury or obstruction of the navigation thereof, or in any place or situation on shore where the same shall be liable to be washed into the sea or into any such ports roads roadsteads harbours havens or navigable rivers either by ordinary or high tides or by storms or land floods; all and every such person and persons so offending shall for every such offence forfeit and pay a sum not exceeding the sum of ten pounds over and besides all expences which may be incurred in removing to a proper place the said matters which may have been deposited contrary to the provisions of this Act, such expences to be recoverable in such manner and with such power of commitment on non-payment thereof as in cases of penalties or forfeitures under this Act: Provided, That nothing herein contained shall extend or be construed to extend to the casting out unlading or throwing out of any ship or vessel lighter barge boat or other craft any stones rocks bricks lime or other materials used or to be used in or towards the building repairing or keeping in repair any quay pier wharf wear bridge or other building, or the banks or sides of any port harbour haven channel or navigable river, or any materials for repairing any highway; any thing herein contained to the contrary thereof in anywise notwithstanding.

Manner in which Ships may unlade their Ballast.

XII. And for the more effectually preventing such injuries, Be it further enacted, That no ship or vessel lighter barge boat or craft whatsoever shall unlade on any part of the shore (except on some wharf properly constructed for the purpose) any ballast stone slate gravel earth rubbish wreck or filth, except at the time of high water or within two hours before or two hours after high water; and that for every such purpose every such ship or vessel lighter barge boat or craft shall approach the shore as far as the tide and the draught of water of such ship vessel lighter barge boat or craft will admit, and shall under no circumstances and in no situation deposit any of the said matters below low-water-mark at neap tides; and that every vessel drawing above eleven feet of water at the stern shall unlade all such materials into some lighter barge or boat as herein-before directed, in order that the same may be conveyed as near the shore as possible at the time of high water as herein-before directed.

Ballast to be cast on Shore from the Side of the Ship nearest to the Land.

Penalty.

XIII. And be it further enacted, That all such ballast and other matter shall in all the above-mentioned cases be cast on shore from the side of the ship lighter barge boat or other craft which shall be nearest to the land and not otherwise; and every person who shall offend in any of the above particulars shall for every such offence forfeit and pay a sum not exceeding the sum of ten pounds over and above all expences which may be incurred in removing to a proper place the said matters which may have been deposited contrary to the provisions of this Act, such expences to be recoverable in such manner and with such powers of commitment on non-payment thereof as in cases of penalties or forfeitures under this Act.

Penalty on taking Ballast from the Shore in Harbours.

XIV. And in order to prevent damage being done to the shores or banks of the ports harbours or havens in this kingdom, Be it further enacted, That no person or persons shall take any ballast or shingle from the shores or banks or any portion of the shores or banks of any port harbour or haven of this kingdom from which the commissioners for executing the office of lord high admiral of the United Kingdom for the time being shall find it necessary for the protection of such port harbour or haven or the works thereof, by order under their hands or the hands of any three of them or the hands of his or their secretary, and published

in the *London Gazette*, shall prohibit the taking or removing of such shingle or ballast, upon pain of forfeiting for every such offence the sum of ten pounds.

Tarpaulins to be used in taking in and discharging Ballast.

XV. And be it further enacted, That in the taking of ballast into any ship or vessel lighter barge boat or other craft, and also in the discharging of the same from any ship or vessel into any lighter boat barge or other craft, every such ship or vessel lighter barge boat or other craft shall be provided with and shall make use of one or more tarpaulin or tarpaulins properly stretched and spread in order to prevent such ballast or any part thereof from falling into the sea or into any harbour haven or navigable river; and in case any person or persons shall either take any ballast into any ship or vessel lighter barge boat or other craft or shall discharge the same from any ship or vessel into any lighter barge boat or other craft without using such sufficient tarpaulin or tarpaulins properly stretched and spread in order to prevent such ballast or any part thereof from falling into the sea or into any such harbour haven or navigable river; all and every person and persons offending therein shall for every such offence forfeit and pay the sum of five pounds.

For licensing the dispensing of Provisions relative to Ballast.

XVI. And be it further enacted, That it may be lawful for the lord high admiral or lords commissioners for executing the office of lord high admiral to grant licences under their hands and seal of office or under the hand and seal of office of his or their secretary for dispensing with the foregoing provisions relative to ballast in cases that may seem to require such dispensation.

Vessels sunk, to be raised.

XVII. And whereas ships or vessels lighters barges boats and other craft are oftentimes sunk or stranded in the ports harbours havens roads roadsteads sounds channels creeks bays and navigable rivers of this kingdom; and the same or the hulks thereof are frequently suffered to sink into and remain in the sand there to the great damage of the said ports harbours havens roads roadsteads sounds channels creeks bays and navigable rivers and also to the great danger and damage of the ships and vessels coming and resorting to the same: For remedy whereof, Be it further enacted, That when and as often as any ship or vessel lighter barge boat or other craft shall be sunk or stranded in any port harbour haven road roadstead sound channel creek bay or navigable river in this kingdom where such harbour master shall be so appointed as aforesaid, it shall be lawful for any such harbour master and also for any commissioner of the navy residing in or near the place where the same shall happen, in case the owner or owners master or other person having the charge or command of such ship or vessel lighter barge boat or other craft shall refuse or neglect to weigh and raise the same for the space of twenty-eight days then next following, to cause any such ship or vessel lighter barge boat or other craft to be weighed and raised and to cause the same and the furniture tackle and apparel thereof or any part thereof respectively and also all or any part of any goods wares merchandizes chattels and effects which shall be found on board the same to be sold by publick auction or otherwise, and thereby and therewith to pay the charges and expences of weighing and raising such ship or vessel lighter barge boat or other craft and clearing the port harbour haven road roadstead sound channel creek bay or navigable river where the same shall happen and also the charges and expences of such sale, rendering the overplus (if any be) to the owner or owners or other person or persons who by law shall be entitled to the same.

Officers indemnified.

XVIII. And it is hereby declared and enacted, That all and every such harbour master and commissioners of the navy, and all and every officer and officers of any of his Majesty's ships of war docks dock yards and arsenals and all and every other person and persons acting in his their or any of their aid or assistance shall be and he and they is and are hereby indemnified for all and whatsoever he or they shall do or cause to be done in pursuance of this Act.

If Harbour-master neglects for Two Months, the Owner may raise his sunk Vessel.

XIX. Provided always and be it further enacted, That in case the said harbour-master or commissioner of the navy shall not proceed to cause

No. XXXII. 54 Geo. III. c. 159.

such ship or vessel lighter barge boat or other craft to be weighed and raised within the space of two calendar months next after the expiration of the said twenty-eight days, then and in that case it shall and may be lawful to and for such owner or owners master or other person to proceed to weigh and raise such sunken or stranded ship or vessel barge boat or other craft and the goods and effects therein in the same manner as if this Act had not been made and passed.

Commissioners of the Navy to act as Justices.

XX. And be it further enacted, That every commissioner of the navy who for the time being shall be residing at any port dock yard or arsenal near to any place where any offence against this Act may be committed shall be and be deemed to be a justice of the peace for all the purposes of this Act; and that all and every the laws and statutes of this realm made and now in force for the ease safety and protection of justices of the peace in the execution of their office shall extend and be construed to extend to all such commissioners of the navy and to all constables headboroughs or other peace officers or persons acting under the warrant or authority of any such commissioner of the navy as fully and effectually, to all intents and purposes, as if the same were herein and hereby repeated and re-enacted, as to and for the ease safety and protection of such commissioners of the navy and the constables headboroughs or other peace officers or persons acting under their or any of their warrant or authority.

Recovery of Penalties.

XXI. And be it further enacted, That all the penalties and forfeitures imposed by this Act shall be sued for within twelve calendar months next after the offence or offences shall be committed before any commissioner of the navy or justice of the peace residing at or near to the place where any such offence or offences shall be committed; all which said penalties and forfeitures shall go and be applied as follows; (that is to say) one moiety thereof to the use of his Majesty his heirs and successors, and the other moiety thereof with full costs to be adjudged by such commissioner of the navy or justice of the peace to the informer; and every such commissioner of the navy and justice of the peace is hereby authorised and required upon information exhibited or complaint made to grant and issue his warrant in writing under his hand to bring before them respectively such offender or offenders at the time and place in such warrant specified; and if on the conviction of the offender or offenders respectively on his her or their confession or on oath, (which oath every such commissioner of the navy and justice of the peace is hereby authorised and empowered to administer) such penalty or forfeiture together with such costs as aforesaid shall not be forthwith paid, it shall be lawful for such commissioner of the navy or justice of the peace to commit any such offender or offenders to the common gaol or house of correction for the county city or borough at or near to the place where the offence or offences shall be committed, there to remain without bail or mainprize for any time not exceeding three months unless such penalty or forfeiture and costs shall be sooner paid.

Extent of Jurisdiction of Commissioners of the Navy and Justices of the Peace.

XXII. And whereas divers ports harbours havens roads roadsteads sounds channels creeks bays and navigable rivers in this kingdom do lie partly in one county and partly in another and partly or in the whole out of the body of any county of this realm; By reason whereof doubts may arise as to the jurisdiction of any commissioner of the navy or justice of the peace touching any offence or offences which may be committed contrary to this Act; Be it therefore enacted, That it shall be lawful for any commissioner of the navy residing at or near to any port harbour or haven or any part thereof, or for any justice of the peace for any county city or borough acting in and for any district or place next adjoining to any such port harbour haven road roadstead sound channel creek bay or navigable river or any member of any of them where any such offence or offences may be committed, to proceed in the execution of this Act and of all the powers and authorities thereof herein and hereby given to commissioners of the navy and justices of the peace in such and the same manner and as fully and effectually to all intents and purposes as if such offence or offences had been committed locally within the limits of the

jurisdiction of such commissioner of the navy or justice of the peace, although the same may have been committed out of the limits of the jurisdiction of such commissioner or justice or out of the body of any county of this realm.

XXIII. And for the more easy and speedy conviction of offenders against this Act and also for the prevention of frivolous and vexatious appeals, Be it further enacted, That every commissioner of the navy and justice of the peace before whom any person or persons shall be convicted of any offence or offences against this Act shall and may cause the conviction to be drawn up according to the following form or in any form of words to the like effect *mutatis mutandis*; which conviction shall be good and effectual to all intents and purposes without stating the case or the facts or evidence in any more particular manner; (that is to say) Offenders.

'BE it Remembered, That on the day of in the year of our Lord *A. B.* is convicted before me one of the Commissioners of the Navy, or one of his Majesty's Justices of the Peace for the of [*as the case may be*] for that the said *A. B.* on the day of at did [*here state the offence against this Act*] contrary to the statute in such case made and provided. Given under my hand and seal the day and year first above written.' Form of Conviction.

Which conviction the said commissioner or justice shall cause to be fairly written upon parchment or paper and returned to the next general quarter sessions of the peace for the county division city town corporate liberty or place where such conviction was made, to be filed by the clerk of the peace, and there to remain and be kept among the records of the same county division or place; and the same shall not be removed by *certiorari* advocation or suspension or any other process whatsoever into any court whatsoever.

XXIV. And be it further enacted, That if any person or persons shall be summoned as a witness or witnesses to give evidence before any such commissioner or justice or justices of the peace touching any of the matters relative to this Act either on the part of the informer or prosecutor or of the party or parties accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed without a reasonable excuse for such his her or their neglect or refusal, to be allowed by such commissioner or justice or justices of the peace before whom the complaint or prosecution shall be depending, that then every such person shall forfeit for every such offence the sum of ten pounds, to be recovered levied and paid and applied in such manner and by such means as is above directed with respect to fines on summary convictions. Punishing Witnesses not attending.

XXV. And be it further enacted, That if any person upon examination on oath or affirmation before any commissioner of the navy or before any justice of the peace in any matter relating to the execution of this Act shall wilfully and corruptly give false evidence, or shall in any information or deposition sworn or affirmation taken in writing before any such commissioner or justice wilfully and corruptly swear or affirm any matter or thing which shall be false or untrue, every such person so offending and being thereof lawfully convicted shall be and is hereby declared to be subject and liable to the like pains and penalties as any persons convicted of wilful and corrupt perjury are by any law now in force subject and liable to. Perjury.

XXVI. And be it further enacted, That it shall and may be lawful to and for any person or persons so convicted by any commissioner of the navy or justice of the peace before-mentioned of any offence or offences against this Act within three calendar months next after such conviction to appeal to the justices of the peace assembled at the general quarter sessions holden for the county city or place where the matter of appeal shall arise, first giving ten days' notice of such appeal to the person or persons appealed against and of the matter thereof, and entering into a recognisance before some commissioner of the navy or justice of the Appeal.

No. XXXII. 54 Geo. III. c. 159.

peace for such county city or place with two sufficient sureties conditioned to try such appeal and for abiding the determination of the court therein; and such justices at the general quarter sessions shall upon due proof of such notice having been given and a recognisance having been entered into hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction and award such costs to either party as to them shall seem just and reasonable; and the decision of the said justices therein shall be final binding and conclusive.

Limitation of Actions.

XXVII. And be it further enacted, That if any action or suit shall be brought or commenced against any person or persons for any thing done in pursuance of this Act, such action or suit shall be commenced within six months after the matter or thing done and the venue therein laid in the proper county and not elsewhere; and the defendant or defendants in such action or suit may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon; and if a verdict shall pass for the defendant or defendants or the plaintiff shall be non-suited or discontinue his action after the defendant or defendants has or have appeared, or if judgment shall be given upon any verdict or demurrer against the plaintiff or plaintiffs, the defendant or defendants shall recover treble costs and have the like remedy for the same as defendants have by law in other cases.

Saving.

XXVIII. Provided always and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to prejudice diminish abridge alter or take away any right of property privilege or jurisdiction or any powers of conservancy held possessed used exercised or enjoyed by any body corporate or politic or by any lord or lords lady or ladies of any manor or manors or any person or persons whatsoever in to upon or over any of the ports harbours havens roads roadsteads sounds channels creeks bays or navigable rivers of the United Kingdom or to the banks shores or sides thereof; or to repeal any of the provisions contained in any Act or Acts of Parliament which may have been passed for the regulation of any river port or harbour in the United Kingdom or the shipping frequenting the same, except such Acts and provisions as are expressly repealed by this present Act; but that such respective rights of property privileges jurisdictions and powers of conservancy shall be respectively and exclusively enjoyed in as full ample and beneficial a manner in every respect to all intents and purposes as if this Act had never been made, any thing herein contained to the contrary notwithstanding.

[No. XXXII. *a.*] 54 George III. c. 171.—An Act to empower the Commissioners of his Majesty's Treasury to restore Seizures; or remit or mitigate Fines, Penalties, or Forfeitures, incurred concerning any Laws relating to the Customs or Excise, or Navigation and Trade of *Great Britain.*—[30*th July* 1814.]

54 Geo. III. c. 171. 27 Geo. 3. c. 32.

WHEREAS an Act passed in the twenty-seventh year of the reign of his present Majesty, intituled *An Act for making further Provisions in regard to such Vessels as are particularly described in an Act made in the Twenty-fourth year of the Reign of his present Majesty, for the more effectual Prevention of Smuggling in this Kingdom, and for extending the said Act to other Vessels and Boats not particularly described therein; for taking off the Duties on Flasks in which Wine or Oil is imported; for laying an additional Duty on Foreign Geneva imported; for taking off the Duty on Ebony, the growth of* Africa, *imported into this Kingdom; and for amending several Laws relative to the Revenue of Customs*: And whereas by the said Act the Commissioners of the Customs in *England* and *Scotland* respectively are authorised to direct under the circumstances and on the terms and conditions therein mentioned any goods or commodities whatever or any ships vessels boats horses cattle or carriages which shall have been seized as forfeited by virtue or in pursuance of any Act or Acts of Par-

No. XXXII. *a.* 54 Geo. III. c. 171.

liament relating to the revenue of customs to be restored to the proprietor or proprietors: And whereas another Act passed in the fifty-first year of the reign of his present Majesty, intituled *An Act to extend the Powers vested in the Commissioners of Customs, of restoring Vessels and Goods seized, to Seizures made by virtue of any Acts relating to the Department of Customs*: And whereas it is expedient that the provisions of the said Acts should be further extended and that the Commissioners of his Majesty's Treasury should be empowered to restore remit or mitigate any forfeiture fine or penalty incurred under any laws relating to the revenue of customs or excise or navigation and trade, either before or after the same shall have been adjudged in any court of law or by or before any commissioner of excise or justice or justices of the peace: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for the commissioners of his Majesty's Treasury or any three or more of them by any order made for that purpose under their hands to direct any ships goods or commodities whatever, seized as forfeited by virtue and in pursuance of any Act or Acts relating to the revenue of customs or excise or any Act for the regulation of the trade and navigation of this kingdom, to be restored to the proprietor or proprietors on the terms and conditions which shall be mentioned in any such order; and it shall also be lawful for the said commissioners of his Majesty's Treasury or any three or more of them for the time being to mitigate or remit any penalty or forfeiture which shall have been incurred or any part of any such fine or penalty under any law or laws relating to his Majesty's revenue of customs or excise or any Act relating to the trade and navigation of this kingdom.

Treasury empowered to restore Seizures to the Proprietors, and to mitigate and remit Penalties incurred under the Laws of Customs and Excise,

II. And be it further enacted, That in any case wherein the said commissioners of his Majesty's Treasury shall exercise the powers hereby vested in them such goods or commodities shall be restored to the proprietor or proprietors or such fines penalties or forfeitures or any parts thereof remitted or mitigated in such manner and upon such terms and conditions as to costs or otherwise as under the circumstances of the case shall appear to the said commissioners to be reasonable and as they the said commissioners or any three or more of them shall think fit to direct; and no person or persons shall be entitled to the benefit of any such order unless the terms and conditions therein contained shall be complied with.

on such Conditions as the Treasury think fit.

[No. XXXIII.] 55 George III. c. 116.—An Act to make further Regulations for the Registry of Ships built in *India*.—[28*th June* 1815.]

[No. XXXIV.] 58 George III. c. 7.—An Act to Indemnify all Persons who have been concerned in advising or carrying into Execution any Order or Orders for permitting the Importation and Exportation of certain Goods and Commodities in Foreign Bottoms into and out of certain of his Majesty's *West India* Islands.—[17*th March* 1818.]

[No. XXXV.] 58 George III. c. 15.—An Act to amend an Act made in the Twenty-sixth Year of his present Majesty, for the Encouragement of the Fisheries carried on in the *Greenland* Seas and *Davis's Streights*, so far as relates to the Oaths thereby required to be taken.—[19*th March* 1818.]

No. XXXVI. 58 Geo. III. c. 19.

[No. XXXVI.] 58 George III. c. 19.—An Act to allow for Three Years, and until Six Weeks after the Commencement of the then next Session of Parliament, the Importation into Ports specially appointed by his Majesty, within the Provinces of *Nova Scotia* and *New Brunswick*, of the Articles therein enumerated, and the Re-exportation thereof from such Ports.—[*8th May* 1818.]

[No. XXXVII.] 58 George III. c. 20.—An Act for more effectually discovering the Longitude at Sea, and encouraging Attempts to find a Northern Passage between the *Atlantic* and *Pacific* Oceans, and to approach the Northern Pole.—[*8th May* 1818.]

[No. XXXVIII.] 58 George III. c. 26.—An Act to continue until the Fifth Day of *July* 1819, Two Acts made in the Fifty-fourth and Fifty-sixth Years of his present Majesty's Reign, for Regulating the Trade in Spirits between *Great Britain* and *Ireland* reciprocally, and to amend the same.—[*23d May* 1818.]

[No. XXXIX.] 58 George III. c. 27.—An Act to permit the Importation of certain Articles into his Majesty's Colonies or Plantations in the *West Indies*, or on the Continent of *South America*, and also certain Articles into certain Ports in the *West Indies*.—[*23d May* 1818.]

[No. XL.] 58 George III. c. 34.—An Act to repeal the several Bounties on the Exportation of Refined Sugar from any Part of the United Kingdom, and to allow other Bounties in lieu thereof, until the Fifth Day of *July* One Thousand Eight Hundred and Twenty, and for reducing the Size of the Packages in which Refined Sugar may be exported.—[*23d May* 1818.]

[No. XLI.] 58 George III. c. 38.—An Act to extend and render more effectual the present Regulations for the Relief of Seafaring Men and Boys, Subjects of the United Kingdom of *Great Britain* and *Ireland*, in Foreign Parts.—[*28th May* 1818.]

58 Geo. III. c. 38. 11 & 12 W. 3. c. 7.

WHEREAS by an Act passed in the eleventh and twelfth years of the reign of King *William* the Third, intituled *An Act for the more effectual Suppression of Piracy*, it is enacted, That in case any master of a merchant ship or vessel should after the nine-and-twentieth day of *September* one thousand seven hundred, during his being abroad, force any man on shore or wilfully leave him behind in any of his Majesty's plantations or elsewhere, or should refuse to bring home with him again

all such of the men which he carried out with him as should be in a condition to return when he should be ready to proceed in his homeward-bound voyage; every such master should, being therefore legally convicted, suffer three months imprisonment without bail or mainprize; but no mode of prosecution is provided by the said Act in case of offences committed against the same: For remedy whereof, Be it enacted by the King's mot excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act all offences committed against the said Act of the eleventh and twelfth years of the reign of King *William* the Third shall and may be prosecuted by indictment or information at the suit of his Majesty's Attorney General in his Majesty's Court of King's Bench at *Westminster*; and that in such indictment or information the offence or offences shall and may be alleged to have been committed at *Westminster* in the county of *Middlesex*; and that the said court shall be and the same is hereby authorised to issue a commission or commissions for the examination of witnesses abroad, and that the depositions taken under such commission or commissions shall be received in evidence on the trial of such indictments and informations respectively.

Offences against the recited Act to be prosecuted by Indictment in the Court of King's Bench at Westminster, &c.

II. And whereas by an Act passed in the thirty-first year of the reign of his late Majesty King *George* the Second, intituled *An Act for the Encouragement of Seamen employed in the Royal Navy, and for establishing a regular Method for the punctual, frequent and certain Payment of their Wages, and for enabling them more easily and readily to remit the same for the Support of their Wives and Families, and for preventing Frauds and Abuses attending such Payments*, it is enacted, that every master or person having charge of a merchant ship or vessel that should arrive in foreign parts, and be homeward-bound from thence to any port in *Great Britain*, should take on board such and so many seafaring men or boys subjects of *Great Britain*, as should by shipwreck capture or other unavoidable accident be driven or cast away, or that should be discharged as unserviceable from any of the ships or vessels of the royal navy at foreign parts or places where governors ministers and consuls appointed by his Majesty his heirs or successors should reside, or where none such are resident where any two or more *British* merchants should reside as the said governors ministers consuls or merchants should direct not exceeding four for each one hundred tons of which his ship should consist; but no penalty or mode of prosecution is imposed or provided by the said Act in case of neglect or refusal to obey the directions therein contained: For remedy whereof be it enacted, That from and after the passing of this Act any master or person having the charge of any merchant ship or vessel belonging to any of his Majesty's subjects that shall be or arrive in any such foreign parts and be bound from thence to any port in the United Kingdom of *Great Britain* and *Ireland*, and who shall be required in writing under the hand or hands of any such governor minister consul or merchants to take on board any such seafaring man or boy men or boys being a subject or subjects of the said United Kingdom, not exceeding the number mentioned in the said Act, for the purpose of carrying and conveying him or them to the said port in the said United Kingdom, and who shall neglect and refuse to take on board or to carry and convey him or them accordingly, shall for every such offence forfeit and pay the sum of one hundred pounds for each and every such man or boy whom he shall so refuse or neglect to take on board and to carry and convey as aforesaid, to be recovered by information at the suit of his Majesty's Attorney General in his Majesty's Court of King's Bench or Exchequer at *Westminster*; and that in such information the offence or offences shall and may be alleged to have been committed at *Westminster* in the county of *Middlesex*, and that the court in which such information shall be brought shall be and the same is hereby authorised to issue a commission or commissions for the examination of witnesses abroad, and that the depositions taken under such commission or commissions shall be received in evidence on the trial of such information.

31 G. 2. c. 10.

Penalty on Masters of Vessels at Foreign Ports refusing to take on board Seafaring Men being his Majesty's Subjects.

No. XLI.

58 Geo. III. c. 38.

Regulations to be observed in case of leaving Seafaring Men at Foreign Ports on account of Sickness.

III. And be it further enacted, That if any master or other person having charge of any merchant ship or vessel belonging to any of his Majesty's subjects shall leave any seafaring man or boy on shore at any foreign port or place on account of sickness or any other inability to proceed on the voyage, every such master or person having the charge of such ship or vessel shall deliver to the governor minister or consul if any there, or if not then to two respectable merchants at such port or place, a true and just account of the wages due to such seafaring man or boy and pay the amount thereof either in money or by a bill upon the owner or owners of such ship or vessel to such governor minister consul or merchants as the case may be; and in default of his so doing or in case of the owner or owners not accepting and paying such bill when due, such owner or owners shall be liable to an action for the amount, with interest at the rate of five pounds *per centum per annum*, to be brought in any of his Majesty's courts of record at *Westminster* or *Dublin* or in his Majesty's court of Exchequer in *Scotland* at the suit of the holder or holders of such bill as for money had and received by such owner or owners to his or their use; but in case of payment of such wages being duly made as required by this Act, the same when received by the said governor minister consul or merchants, as the case may be, shall be applied by him or them towards the payment of any hospital expences of such seafaring man or boy as aforesaid (except the charges for his subsistence) and also towards the payment of the expences of clothing bedding or other necessaries that may be supplied to him, and the remainder (if any) shall be paid to such seafaring man or boy.

Penalty on Masters neglecting to deliver an Account of Wages due to such Seafaring Persons.

IV. And be it further enacted, That if any such master or other person having charge of any such ship or vessel and leaving any such seafaring man or boy on shore as aforesaid shall neglect or refuse to deliver a just and true account of the wages due to such seafaring man or boy as aforesaid and to pay the amount thereof in money or by such bill as aforesaid; or shall deliver a false account of such wages or pay less than the full and true amount thereof in manner aforesaid; every such master or other person so offending shall for every such offence forfeit and pay the sum of twenty pounds, to be recovered with full costs of suit by any person or persons who will sue for the same by action of debt bill plaint or information in any of his Majesty's courts of record at *Westminster*, wherein no essoign protection wager of law or more than one imparlance shall be allowed; and that in such action bill plaint or information it shall be sufficient to allege that the offence or offences was or were committed at *Westminster* in the county of *Middlesex*; and that the court in which such action bill plaint or information is brought shall be and the same is hereby authorised to issue a commission or commissions for the examination of witnesses abroad, and that the depositions taken under such commission or commissions shall be received in evidence on the trial of such action bill plaint or information respectively.

[No. XLII.] 58 George III. c. 56.—An Act to make perpetual an Act of the Forty-sixth Year of his present Majesty, for granting an additional Bounty on the Exportation of the Silk Manufactures of *Great Britain*.—[1*st June* 1818.]

[No. XLIII.] 58 George III. c. 61.—An Act for the better accommodating of his Majesty's Packets within the Harbour on the North Side of the Hill of *Howth*, and for the better Regulation of the Shipping therein.—[1*st June* 1818.]

[No. XLIV.] 58 George III. c. 62.—An Act to continue until the First Day of *August* One Thousand Eight Hundred and Nineteen, Two Acts of his present Majesty, allowing the bringing of Coals, Culm and Cinders to *London* and *Westminster*.—[1*st June* 1818.] No. XLIV. 58 Geo. III. c. 62.

[No. XLV.] 58 George III. c. 63.—An Act to revive and continue until the Twenty-fifth Day of *March* One Thousand Eight Hundred and Nineteen an Act made in the Forty-ninth Year of his present Majesty, to permit the Importation of Tobacco from any place whatever.—[3*d June* 1818.]

[No. XLVI.] 58 George III. c. 72.—An Act for Improving and Completing the Harbour of *Dunmore*, in the County of *Waterford*, and rendering it a fit Situation for his Majesty's Packets.—[3*d June* 1818.]

[No. XLVII.] 58 George III. c. 76.—An Act to subject Foreigners to Arrest and Detention for Smuggling within certain Distances of any of the Dominions of his Majesty; for regulating Rewards to the seizing Officers, according to the Tonnage of Vessels or Boats seized and condemned; and for the further Prevention of the Importation of Tea, without making due Entry thereof with the Officers of Customs and Excise.—[5*th June* 1818.]

[No. XLVIII.] 58 George III. c. 83.—An Act to amend and reduce into one Act the several Laws relating to the Manner in which the *East India* Company are required to hire Ships.—[5*th June* 1818.]

[No. XLIX.] 58 George III. c. 89.—An Act to repeal so much of an Act passed in the Forty-third Year of his present Majesty, as requires the Attendance of Magistrates on board Vessels carrying Passengers from the United Kingdom to his Majesty's Plantations or to Foreign Parts.—[5*th June* 1818.]

[No. L.] 58 George III. c. 94.—An Act to continue, until the Twenty-ninth Day of *September* One Thousand Eight Hundred and Nineteen, and to amend an Act passed in *Ireland* in the Thirty-sixth Year of his present Majesty, for the Improvement and Extension of the Fisheries on the Coasts of *Ireland*.—[10*th June* 1818.]

No. LI. 57 Geo. III. c. 5.

[No. LI.] 57 George III. c. 5.—An Act to ascertain the Tonnage of Vessels propelled by Steam.—[23*d March* 1819.]

[No. LII.] 59 George III. c. 6.—An Act to enable his Majesty to direct the Distribution of any Reward awarded by the Commissioners of the Customs or Excise, to the Officers of the Army, Navy, or Marines, for apprehending Smugglers, in such Manner as his Majesty shall be pleased to appoint.—[23*d March* 1819.]

[No. LIII.] 59 George III. c. 7.—An Act to regulate the Cutlery Trade in *England*.—[23*d March* 1819.]

[No. LIV.] 59 George III. c. 14.—An Act to continue until First of *July* One Thousand Eight Hundred and Twenty-three an Act of the Forty-sixth of his present Majesty, for permitting the Exportation of Wool from the *British* Plantations in *America*.—[31*st March* 1819.]

[No. LV.] 59 George III. c. 18.—An Act to make perpetual an Act of the Forty-fourth Year of his present Majesty, for permitting the Exportation of Salt from the Port of *Nassau* in the Island of *New Providence*, the Port of *Exuma*, and the Port of *Crooked Island* in the *Bahama Islands*, in *American* Ships coming in Ballast.—[31*st March* 1819.]

[No. LVI.] 59 George III. c. 25.—An Act to enable his Majesty to fix the Rate and direct the Disposal of Freight Money, for the Conveyance of Specie and Jewels on board his Majesty's Ships and Vessels.—[8*th April* 1819.]

[No. LVII.] 59 George III. c. 38.—An Act to enable his Majesty to make Regulations with respect to the Taking and Curing Fish on certain parts of the Coasts of *Newfoundland*, *Labrador*, and his Majesty's other Possessions in *North America*, according to a Convention made between his Majesty and the United States of *America*.—[14*th June* 1819.]

[No. LVIII.] 59 George III. c. 55.—An Act to extend the Provisions of Three Acts of the Fifty-second, Fifty-third, and Fifty-seventh Years of his present Majesty, for allowing *British* Plantation Sugar and Coffee, and

other Articles, imported into *Bermuda* in *British* Ships, to be exported to *America* in Foreign Vessels, and to permit Articles, the Produce of *America*, to be imported into *Bermuda* in Foreign Ships, to certain other Articles.—[2*d July* 1819.]

No. LVIII. 59 Geo. III. c. 55.

[No. LIX.] 59 George III. c. 58.—An Act for facilitating the Recovery of the Wages of Seamen in the Merchant Service.—[2*d July* 1819.]

59 Geo. III. c. 58.

WHEREAS the seamen and mariners employed in the merchant service and in the coasting trade of this kingdom are exposed to great difficulties expence and inconvenience in suing for or obtaining payment of their wages, in cases of dispute with the masters or owners of vessels in which they may have served; and it is expedient that greater facility should be given for recovery of such wages: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the first day of *August* in the year of our Lord one thousand eight hundred and nineteen it shall be lawful for any seaman mariner or other person (except masters or apprentices) who shall have served on board any ship or vessel trading from any port or place or ports or places in that part of the United Kingdom called *England* to ports beyond the seas or to any other port or place in *Great Britain*, by virtue or in pursuance of any contract or engagement in writing or not in writing, and whether the same be by parole or by deed under seal or otherwise, in case the master or commander or other person having or taking the charge of any such ship or vessel, after the expiration of two days from the time of entry of such ship or vessel at the custom house, or from the delivery of her cargo or from the time when such seaman or mariner or other person (except as aforesaid) shall be discharged, which shall first happen (unless an agreement shall have been made and entered into to the contrary, and in that case after the expiration of the time so stipulated or agreed for the payment of such wages as aforesaid) neglect or refuse to pay to any such seaman mariner or other person (except as aforesaid) his or their wages or any part thereof, to complain to any justice or justices of the peace residing in or near to the place where such ship or vessel shall have ended her voyage or been cleared at the custom house or delivered her cargo, or to any justice or justices of the peace residing in or near to the place where such master or commander or other person having or taking the charge of any such ship or vessel, or (in case of there being no master or commander or other person in charge of any such ship or vessel) where any owner or owners thereof shall then happen to be, and thereupon it shall be lawful for any such justice or justices of the peace respectively, and they are hereby required upon such complaint made to them upon oath or affirmation to issue a summons to such master or commander or other person having or taking the charge of any such ship or vessel or (in case of there being no master or commander or other person in charge of any such ship or vessel) to such owner or owners thereof, to appear before them at such time and place to be in such summons specified; and upon the party or parties appearing in pursuance of such summons, or not appearing after having been so summoned, the said justice or justices shall and they are hereby empowered to examine upon oath such seaman mariner or other person (except as aforesaid) or any other witness or witnesses touching any such complaint or any difference or dispute respecting such wages, and to make such order for payment of so much wages to such seaman mariner or other person as aforesaid, as to such justice or justices shall seem reasonable and just; provided that the

Justices empowered, on Complaint of Seamen, to hear and settle Disputes about Wages not exceeding 20*l.*

No. LIX.

59 Geo. III. c. 58.

sum in question do not exceed twenty pounds so claimed to be due to any one seaman mariner or other person as aforesaid; and in case of refusal to pay or non-payment of any sum or sums of money so ordered by the space of two days next after such order and determination, such justice or justices shall and may issue forth their warrant to levy the same by distress and sale of the goods and chattels of such master or commander or other person having or taking the charge or command of any such ship or vessel, or (in case of there being no master or commander or other person in charge of any such ship or vessel) of any such owner or owners as aforesaid, rendering the overplus (if any there be) after deducting all the costs charges and expences of any summonses informations complaints hearings warrants and of such distress and the keeping appraisement or sale thereof or otherwise relating thereto, unto the person or persons whose goods and chattels shall be so distrained and sold; and in case sufficient distress shall not be found for payment and satisfaction of the amount of wages so ordered to be paid by such justice or justices, and the same with such costs charges and expences as aforesaid shall not be paid within the said period of two days, it shall and may be lawful for such justice or justices of the peace and they are hereby authorised and required by warrant or warrants under their hands and seals to levy the amount of the wages so ordered to be paid, together with such costs charges and expences as aforesaid, on the ship or vessel for the service on board which such wages shall be so ordered to be paid, or any of the tackle furniture or apparel thereof, rendering the overplus thereof (if any) after payment of such expences as aforesaid to the master or commander or owner thereof; and the decision of such justice as aforesaid shall be final and conclusive, as well on such seaman mariner or other person as upon such master or commander or other person taking the charge or command of such ship or vessel and the owner or owners thereof; save and except in such cases in which an appeal shall be interposed by either party to the High Court of Admiralty, such appeal to be interposed within the space of seven days after the order of the said justice or justices so to be made as aforesaid.

On Refusal to comply with Justices' Determination, how Wages to be recovered.

Justices' Determination to be final, unless appealed against to the High Court of Admiralty.

II. And be it further enacted, That in case the seaman or mariner or other person so claiming to be entitled to such wages as aforesaid, or the party or parties who is or are ordered to pay the same or their agents respectively, shall be dissatisfied with such order and decision of the justice or justices touching such wages as aforesaid, it shall be lawful for either of them respectively within forty-eight hours after the making such order as aforesaid but not afterwards to give notice in writing to the justice or justices so making such order of his her or their desire of obtaining the judgment of the High Court of Admiralty respecting the said wages and the order so made thereon as aforesaid, by delivering the same to such justice or justices or leaving the same at their last or most usual place of abode; and thereupon the party so resisting or disputing the claim to such wages or the order to be made by such justice or justices thereon, shall be compelled to proceed within thirty days from the date of such order by taking out a monition against the adverse party, and shall on the service of such notice give good and sufficient bail in double the amount of the wages so ordered to be paid as aforesaid, and which bail shall be taken by a commissioner for taking examinations in prize causes if there shall be one in the port or place where such difference shall arise or order be made, but if there shall be no such commissioner there then the said justice or justices who shall pronounce such order or any other of his Majesty's justices of the peace are hereby authorised to take the same; and the commissioner justice or justices who shall take such bail shall certify the same according to the form contained in the schedule hereunto annexed, and transmit the same without delay to the High Court of Admiralty, and also a copy of the order so made by such justice or justices on unstamped paper certified under the hand or hands of such commissioner justice or justices taking the bail as aforesaid, and the same shall be admitted by such Court of Admiralty as evidence in the cause.

If Seamen or others are dissatisfied, to give Notice of Intention to appeal.

III. And be it further enacted, That no seaman or mariner or other person by entering into or signing any contract or agreement as required by the several statutes now in force for that purpose, or into any covenant stipulation or agreement to be comprised in any such contract or agreement, which shall have the effect or be designed or intended to have the effect of depriving such seaman mariner or other person of the remedies by this Act given for recovery of wages so due to him or them as aforesaid, shall be deprived of or hindered from using any method or means for recovery of wages against any ship or the masters or owners thereof, which immediately before the passing of this Act he might, and which after the said first day of *August* he may make use of; and that in all cases where it shall or may be necessary in resorting to the remedies by this Act given for recovery of such wages as aforesaid, that the agreement or agreements in writing aforesaid should be produced before such justice or justices as aforesaid, no obligation shall be on any seaman mariner or other person as aforesaid to produce the same, but such obligation shall lie on the master or commander or other person having the charge or command or the owner or owners of the ship or vessel for which the wages shall be demanded; and no seaman or mariner shall fail in any complaint or proceeding before any justice or justices for recovery of wages for want of such agreement or agreements being produced, but shall and may proceed therein as if no such agreement in writing had been made.

Seamen not to be deprived of Agreements entered into before the passing of this Act.

IV. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to deprive any seaman mariner or other person as aforesaid of any remedy means or process which may now be resorted to or used against any ship or vessel or the master or commander or person having the charge of such ship or vessel or the owner or owners thereof for the recovery of wages due for serving on board of any such ship or vessel.

Not to deprive Seamen of any Remedy which may now be resorted to.

V. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to that part of the United Kingdom of *Great Britain* and *Ireland* called *Scotland*.

Act not to extend to Scotland.

VI. And be it further enacted, That this Act shall be deemed and taken to be a publick Act, and shall be judicially taken notice of as such by all judges justices and others whomsoever, without being specially pleaded.

Publick Act.

VII. And be it further enacted, That this Act shall continue in force for seven years from the passing hereof.

Continuance of the Act.

The SCHEDULE referred to by this Act.

to wit. } ON the day of in the year of our Lord one thousand eight hundred and before at in the county of *A. B.* and *C. D.* appeared personally, and produced themselves as sureties for the master of the ship and for the owners thereof, and submitting themselves to the jurisdiction of the said Court of Admiralty of *England* bound themselves their heirs, executors, and administrators, for the said master and owners of the said ship, in the sum of each of lawful money of *Great Britain*, unto *E. F.* a seaman having served on board the said ship, to answer the amount of such wages as shall be hereafter decreed by the said court to be due to the said *E. F.*, according to the tenor of the Act in that case made and provided; and unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, whereon the same shall be found, to the value of the sum above mentioned.

This bail was duly taken, acknowledged, and received at the time herein-before above written, before me the undersigned commissioner, [*or*, as the undersigned justice or justices of the peace] and I [*or*, we] do believe and consider the persons above mentioned sufficient security for the sum above mentioned.

No. LX.
59 Geo. III. c. 59.

[No. LX.] 59 George III. c. 59.—An Act to extend the Provisions of an Act made in the Fifty-fifth Year of his present Majesty, for the Payment of Wages due to deceased Seamen and Marines, to Wages due to Intestate Bastards.—[2*d July* 1819.]

59 Geo. III. c. 59.
55 G. 3. c. 60.

WHEREAS by an Act passed in the fifty-fifth year of the reign of his present Majesty, intituled *An Act to repeal several Acts relating to the Execution of Letters of Attorney and Wills of Petty Officers, Seamen, and Marines, in his Majesty's Navy, and to make new Provisions respecting the same*, it was enacted, that where any sum not exceeding the sum of twenty pounds should be due for the services as in the said Act mentioned of any petty officer or seaman non-commissioned officer of marines or marine deceased, it should and might be lawful for the inspector of seamen's wills to issue or cause to be issued a certificate in the form or to the effect and for the purpose in the said Act mentioned: And whereas it is expedient that the said provisions should be extended to the petty officers and seamen non-commissioned officers of marines and marines who being born bastards shall have died or shall die intestate: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same,

Provisions for granting Certificates by the Inspector General under recited Act, for Sums not exceeding 20*l.* for Services of Petty Officers or Seamen, &c. shall be extended to Cases where such Persons being Bastards shall die intestate.

That where any sum not exceeding the sum of twenty pounds shall be due for the services in the said recited Act mentioned of any petty officer or seaman non-commissioned officers of marines or marine who being born a bastard shall have died or shall die intestate, in order that the person or persons who shall be entitled to the effects or any part thereof by grant or grants from the Crown may not be put to great expense it shall and may be lawful for the inspector of seamen's wills upon inspection and examination of such grant or grants to issue or cause to be issued a certificate in the form or to the effect provided by the said Act in the case of any sum not exceeding the sum of twenty pounds being due for the services of any petty officer or seaman non-commissioned officers of marines or marine deceased, and that all and every other the provisions enactments clauses pains penalties and forfeitures provided by the said Act in those cases shall from and after the passing of this Act be applied and extended to all cases of certificates issued or caused to be issued by the inspector of seamen's wills upon grants from the Crown of any sum or sums not exceeding the sum of twenty pounds due for or in respect of the services of any petty officer or seaman non-commissioned officer of marines or marine who being born a bastard shall have died or shall die intestate.

[No. LXI.] 59 George III. c. 73.—An Act to repeal several Acts, requiring the Masters of Vessels carrying certificated Goods to *Ireland* to take Duplicates of the Contents; prohibiting the Importation of certain wrought Goods, and the Exportation of Gunpowder, when the Price shall exceed a certain Sum.—[6*th July* 1819.]

[No. LXII.] 59 George III. c. 74.—An Act to allow the Importation of Tobacco from the *East Indies* and other Places; and for confining the Exportation of Tobacco from *Great Britain*, and the Importation thereof into *Ireland*, to Vessels of Seventy Tons Burthen and upwards.—[6*th July* 1819.]

[No. LXIII.] 59 George III. c. 75.—An Act to continue until Fifth of *July* One Thousand Eight Hundred and Twenty, Two Acts made in the Fifty-fourth and Fifty-sixth Years of his present Majesty for regulating the Trade in Spirits between *Great Britain* and *Ireland* reciprocally.—[6*th July* 1819.]

No. LXIII. 59 Geo. III. c. 75.

[No. LXIV.] 59 George III. c. 77.—An Act to continue until the Twenty-fourth of *June* One Thousand Eight Hundred and Twenty-six an Act for amending the Laws relating to the Allowance of the Bounties on Pilchards exported.—[6*th July* 1819.]

[No. LXV.] 59 George III. c. 79.—An Act to continue until the First of *August* One Thousand Eight Hundred and Twenty, Two Acts of the Forty-fifth and Fiftieth Years of his present Majesty, allowing the bringing of Coals, Culm and Cinders to *London* and *Westminster* by Inland Navigation.—[6*th July* 1819.]

[No. LXVI.] 59 George III. c. 98.—An Act to limit the Continuance of the several Acts for imposing Fines upon Townlands and Places in *Ireland*, in respect of Offences relating to the unlawful Distillation of Spirits; and to amend the said Acts, and to provide for the more effectual Prevention or Suppression of such Offences.—[12*th July* 1819.]

[No. LXVII.] 59 George III. c. 103.—An Act to repeal so much of Two Acts as require certain Accounts to be laid before Parliament; and to amend an Act of the Twenty-sixth Year of his present Majesty, relative to laying an Account before Parliament.—[12*th July* 1819.]

[No. LXVIII.] 59 George III. c. 107.—An Act to consolidate and amend several Acts for regulating the granting of Permits and Certificates for the Conveyance and Protection of certain Goods in *Ireland*.—[12*th July* 1819.]

[No. LXIX.] 59 George III. c. 108.—An Act to amend several Acts relating to the Post Office and Conveyance of Letters in *Ireland*.—[12*th July* 1819.]

[No. LXX.] 59 George III. c. 109.—An Act for the further Encouragement and Improvement of the *Irish* Fisheries.—[12*th July* 1819.]

No. LXXI. 59 Geo. III. c. 110.

[No. LXXI.] 59 George III. c. 110.—An Act to remove Doubts respecting the Dues payable to the Levant Company.—[12*th July* 1819.]

[No. LXXII.] 59 George III. c. 112.—An Act to grant, until the Fifth of *July* One Thousand Eight Hundred and Twenty-one an additional Bounty on the Exportation of certain Silk Manufactures of *Great Britain*.—[12*th July* 1819.]

[No. LXXIII.] 59 George III. c. 113.—An Act for continuing the Premiums allowed to Ships employed in the Southern Whale Fishery.—[12*th July* 1819.]

[No. LXXIV.] 59 George III. c. 121.—An Act to make further Regulations for the Prevention of Smuggling.—[12*th July* 1819.]

[No. LXXV.] 59 George III. c. 122.—An Act to permit Vessels under a certain Tonnage to trade between the United Kingdom and *New South Wales*.—[12*th July* 1819.]

[No. LXXVI.] 59 George III. c. 123.—An Act to empower the Officers of the Customs in *Great Britain* to allow Reports of Vessels' Cargoes to be amended; to require Goods which have been warehoused without Payment of Duties, or being prohibited warehoused for Exportation, to be put on board Vessels by Persons licensed for that Purpose; to direct that Cocquet and Bond shall be required for Slate and Stone carried Coastwise; and to empower Officers of the Customs to administer Oaths.—[12*th July* 1819.]

[No. LXXVII.] 59 George III. c. 124.—An Act for amending an Act made in the Forty-third Year of the Reign of his present Majesty, for regulating the Vessels carrying Passengers from the United Kingdom to his Majesty's Plantations and Settlements Abroad, or to Foreign Parts, with respect to the Number of such Passengers, and for making further Provision for that Purpose.—[12*th July* 1819.]

[No. LXXVIII.] 59 George III. c. 125.—An Act to admit certain Goods imported from the *East Indies* to Entry and Payment of Duty without being warehoused.

and to permit the Exportation of certain *East India* Goods to *Guernsey* and *Jersey*, and the Removal of certain *East India* Goods to *Liverpool, Lancaster, Bristol,* and *Glasgow*, for Exportation.—[12*th July* 1819.] No. LXXVIII. 59 Geo. III. c. 125.

[No. LXXIX.] 59 George III. c. 126.—An Act for requiring the like Proof, to obtain Drawback of Duty on Coals used or consumed in calcining or smelting Tin, Copper or Lead Ores, in the Counties of *Devon* and *Cornwall*, as is required on Coals used in Mines of Tin, Copper, or Lead, in the said Counties.—[12*th July* 1819.]

[No. LXXX.] 1 George IV. c. 8.—An Act to allow a Drawback on Goods, Wares, and Merchandize imported into any *British* Colony or Plantation in *America*, on the Exportation thereof to any Foreign Country to which they may be legally exported.—[22*d June* 1820.]

[No. LXXXI.] 1 Geo. IV. c. 9.—An Act for granting the Privileges of *British* Ships to Vessels built at *Malta, Gibraltar*, and *Heligoland*, and certain of those Privileges to Vessels built in the *British* Settlements at *Honduras*.—[22*d June* 1820.]

1 Geo. IV. c. 9.

Vessels built at Malta, Gibraltar, and Heligoland to be registered, and Certificate obtained, according to the Regulations of 26 G. 3. c. 60.

WHEREAS it is expedient that all the privileges of *British* ships should be granted to vessels built at *Malta, Gibraltar*, and *Heligoland*, and that certain of those privileges should be granted to vessels built in the *British* settlements at *Honduras*: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for the governor lieutenant governor or commander in chief at *Malta Gibraltar* and *Heligoland* respectively, and he and they is and are hereby authorized and required, on application being made to them or either of them for that purpose, to make registry of any ship or vessel built in those places respectively and to grant a certificate of such registry in the same manner and under the same rules regulations and restrictions as the governor lieutenant governor or commander in chief residing in any colony plantation island or territory belonging to his Majesty in *Asia Africa* or *America* are by an Act of the twenty-sixth year of the reign of his late Majesty King *George* the Third, intituled *An Act for the further Increase of Shipping and Navigation*, authorized to make registry of the ships and vessels therein mentioned and to grant certificates of such registry, although there may not be any principal officer or officers of the customs residing in *Malta Gibraltar* and *Heligoland* respectively.

Certain Powers of recited Act to extend to Governor, &c. of Malta, Gibraltar and Heligoland.

II. And be it further enacted, That all the powers and authorities in relation to any acts matters or things that may be done by the governor lieutenant governor or commander in chief in any such colony plantation island or territory under and in pursuance of the said recited Act shall and may be done and put in execution and shall extend to the governor lieutenant governor and commander in chief at *Malta Gibraltar* and *Heligoland* respectively; and all and every pain penalty fine or forfeiture for any offence whatever committed against or in breach of the said recited Act, and every other clause matter and thing therein contained as to the registry of ships and vessels, shall so far as the same are

No. LXXXI. 1 Geo. IV. c. 9.

applicable extend and be deemed construed and taken to extend to ships and vessels registered under and in pursuance of this Act in as full and ample a manner to all intents and purposes as if the said powers and authorities pains penalties fines forfeitures provisions clauses matters and things were repeated and re-enacted in this Act and were made part thereof.

Ships so registered entitled to Privileges of British Ships.

III. And be it further enacted, That any ship or vessel so registered as aforesaid being owned and navigated according to law shall be entitled to all the privileges and advantages of a ship or vessel in like manner as if registered in *Great Britain* to all intents and purposes whatsoever.

Certificates of Registry to be transmitted to the Commissioners of Customs.

IV. And be it further enacted, That the proper officer or officers by whom certificates of registry shall have been granted by virtue of and in pursuance of this Act shall forthwith or within one month at the farthest transmit to the commissioners of his Majesty's customs in *London* a true and exact copy of every certificate of registry with the number thereof which shall have been so granted.

Vessels built at Honduras entitled to Privileges of British Vessels, so far as regards direct Trade between those Settlements and the United Kingdom.

V. And whereas it is expedient to admit vessels built in the *British* Settlements at *Honduras* in the province of *Yucatan* to the privileges of *British* vessels so far as regards the direct trade between those Settlements and the United Kingdom; Be it therefore further enacted, That all ships or vessels built in the said Settlements and wholly owned by *British* subjects shall be entitled to the privileges and advantages of *British* ships as far as respects the direct trade between *Great Britain* and the said Settlements: Provided always, that no such ship or vessel shall be entitled to the said privileges and advantages unless the same shall be navigated according to law, and the master or other person having or taking the charge or command of such ship or vessel shall at the time of his arrival and reporting of his ship or vessel at any port in *Great Britain* from the said Settlements produce and deliver to the collector or other proper officer of the customs at such port a certificate under the hand and seal of the superintendent of the said Settlements, certifying that satisfactory proof has been made before him that such ship or vessel was actually built in the said Settlements and wholly owned by *British* subjects.

Certificate to be produced,

on Oath.

VI. And be it further enacted, That every such master or other person having or taking the charge or command of any such ship or vessel shall make oath that the same is the identical ship or vessel for which such certificate has been given and produced.

[No. LXXXII.] 1 George IV. c. 11.—An Act to continue until the Fifth of *July* One Thousand Eight Hundred and Twenty-five an Act of the Fifty-seventh Year of his late Majesty, for regulating the Trade and Commerce to and from the *Cape of Good Hope*, and for regulating the Trade of the *Island of Mauritius*.—[22*d June* 1820.]

[No. LXXXIII.] 1 George IV. c. 12.—An Act to extend several Acts for allowing the Importation and Exportation of certain Goods and Merchandise to *Morant Bay* in the Island of *Jamaica*.—[22*d June* 1820.]

[No. LXXXIV.] 1 George IV. c. 14.—An Act to repeal the Drawback on certain Gold Articles exported; and to permit the Exportation of Cordage entitled to Bounty, free from Right of Pre-emption by the Commissioners of the Navy.—[22*d June* 1820.]

LXXXV.
1 Geo. IV.
c. 15.

[No. LXXXV.] 1 George IV. c. 15.—An Act to continue until the Twenty-fifth of *July* One Thousand Eight Hundred and Twenty-one an Act of the Twenty-eighth of his late Majesty, for the more effectual Encouragement of the Manufacture of Flax and Cotton in *Great Britain*.—[22*d June* 1820.]

[No. LXXXVI.] 1 George IV. c. 25.—An Act to repeal part of an Act made in the Ninth Year of the Reign of his late Majesty King *George* the Second, relative to the Manufacture of Sail Cloth.—[30*th June* 1820.]

[No. LXXXVII.] 1 George IV. c. 26.—An Act for the Encouragement and Improvement of the Coasting Trade in *Ireland*.—[30*th June* 1820.]

[No. LXXXVIII.] 1 George IV. c. 32.—An Act to permit the Importation of Coffee from any Foreign Colony or Plantation in *America* into the Port of *Bridgetown* in *Barbadoes*,—[8*th July* 1820.]

[No. LXXXIX.] 1 George IV. c. 33.—An Act to amend and continue until the Thirty-first of *December* One Thousand Eight Hundred and Twenty-three several Laws relating to the Encouragement of the *Greenland* Whale Fisheries, to the allowing Vessels employed in the said Fisheries to complete their full Number of Men at certain Ports.—[8*th July* 1820.]

[No. XC.] 1 George IV. c. 34.—An Act for further continuing until the First of *January* One Thousand Eight Hundred and Twenty-six so much of an Act passed in the Fifty-sixth of his late Majesty as permits Subjects of his Majesty the King of the *Netherlands* to import and export certain Articles into and from the Colonies of *Demarara*, *Berbice*, and *Essequibo*, in Ships not of the Built of the Dominions of his said Majesty.—[8*th July* 1820.]

[No. XCI.] 1 Geo. IV. c. 39.—An Act for the Assistance of Trade and Manufactures in *Ireland*, by authorising the Advance of certain Sums for the Support of Commercial Credit there.—[8*th July* 1820.]

[No. XCII.] 1 Geo. IV. c. 43.—An Act to amend the Laws relating to Smuggling, and the Coasting Trade in *Great Britain*.—[15*th July* 1820.]

No. XCIII. 1 Geo. IV. c. 52.

[No. XCIII.] 1 Geo. IV. c. 52.—An Act to continue until the Twenty-fifth of *March* One Thousand Eight Hundred and Twenty-one an Act made in the Forty-sixth Year of his late Majesty for permitting the Importation of Masts, Yards, Bowsprits and Timber fit for Naval Purposes, from the *British* Colonies in *North America*.—[15*th July* 1820.]

[No. XCIV.] 1 George IV. c. 53.—An Act to continue until the Twenty-fifth of *March* One Thousand Eight Hundred and Twenty-one so much of an Act of the Fifty-ninth Year of his late Majesty, as allows *Santa Maria* Wood and *Teake* Wood to be Imported free of Duty.—[15*th July* 1820.]

[No. XCV.] 1 George IV. c. 54.—An Act to continue until the First of *August* One Thousand Eight Hundred and Twenty-five Two Acts of the Forty-fifth and Fiftieth Years of his late Majesty, allowing the bringing of Coals, Culm and Cinders to *London* and *Westminster*, by inland Navigation.—[15*th July* 1820.]

[No. XCVI.] 1 George IV. c. 59.—An Act to amend, revive, and continue until the Twenty-fifth of *March* One Thousand Eight Hundred and Twenty-five an Act of the Fifty-second Year of his late Majesty, for regulating the Separation of damaged from sound Coffee, and for permitting Dealers to send out any quantity of Coffee, not exceeding Eight Pounds weight, without Permit.—[15*th July* 1820.]

[No. XCVII.] 1 George IV. c. 64.—An Act to continue until the Fifth of *July* One Thousand Eight Hundred and Twenty-four an Act made in the Fifty-eighth Year of his late Majesty, to repeal the several Bounties on the Exportation of Refined Sugar from the United Kingdom, and to allow other Bounties in lieu thereof, and to reduce the Size of the Packages in which Refined Sugar may be exported.—[15*th July* 1820.]

[No. XCVIII.] 1 George IV. c. 67.—An Act to continue until the First of *August* One Thousand Eight Hundred and Twenty-two the low Duties on Coals and Culm carried Coastwise to any Port within the Principality of *Wales*.—[15*th July* 1820.]

[No. XCIX.] 1 George IV. c. 69.—An Act to alter and amend an Act passed in the Fifty-sixth Year of his late Majesty for erecting a Harbour for Ships to the Eastward of *Dunleary*, within the Port of *Dublin*; and to provide for the Erection of a Western Pier to the said Harbour of *Dunleary*.—[15*th July* 1820.] No. XCIX. 1 Geo. IV. c. 69.

[No. C.] 1 George IV. c. 76.—An Act to repeal so much of an Act of the Fifty-seventh Year of his late Majesty as prohibits the Sale in *England* of any Spirits not being Spirits of Wine, *British* Brandy, *British* Gin, or Compounds.—[24*th July* 1820.]

[No. CI.] 1 George IV. c. 80.—An Act allowing Importers of Sugar in *Ireland* to give Certificates for Sugar sold by them in lieu of Permits.—[24*th July* 1820.]

[No. CII.] 1 George IV. c. 82.—An Act to amend an Act of the Fifty-ninth Year of the Reign of his late Majesty King *George* the Third for the Encouragement and Improvement of the *Irish* Fisheries.—[24*th July* 1820.]

[No. CIII.] 1 George IV. c. 103.—An Act for the further Encouragement and Improvement of the *British* Fisheries.—[24*th July* 1820.]

[No. CIV.] 1 George IV. c. 112.—An Act for Improving and Completing the Harbour of *Port Patrick* in *Scotland*, so as to render the same a more fit Situation for his Majesty's Packets.—[24*th July* 1820.]

[No. CV.] 1 George IV. c. 113.—An Act for granting a certain Sum of Money towards Improving the Harbour of *Donaghadee* in *Ireland*, and rendering it a more fit Situation for his Majesty's Packets.—[24*th July* 1820.]

[No. CVI.] 1 & 2 George IV. c. 49.—An Act for making further Regulations in respect to the Payment by Remittance Bill of the Wages of Petty Officers, Seamen, and Marines, in the Royal Navy; and for extending the Provisions of an Act made in the Fifty-fifth Year of his late Majesty, relating to the Execution of Letters of Attorney and Wills of Petty Officers, Seamen, and Marines, in his Majesty's Navy.—[8*th June* 1821.]

WHEREAS by an Act passed in the thirty-first year of the reign of his late Majesty King *George* the Second, intituled *An Act for the Encou-* 1 & 2 Geo. IV. c. 49. 31 G. 2. c. 10.

No. CVI. 1 & 2 Geo. IV. c. 49.

ragement of Seamen employed in the Royal Navy, and for establishing a regular Method for the punctual, frequent, and certain Payment of their Wages, and for enabling them more easily and readily to remit the same for the Support of their Wives and Families, and for preventing Frauds and Abuses attending such Payments; and by another Act passed in the thirty-second year of the reign of his late Majesty, intituled *An Act for explaining and amending an Act passed in the Thirty-first Year of the Reign of his late Majesty King* George *the Second, intituled 'An Act for the Encouragement 'of Seamen employed in the Royal Navy, and for establishing a regular 'Method for the punctual, frequent, and certain Payment of their Wages, 'and for enabling them more easily and readily to remit the same for the Sup-'port of their Wives and Families, and for preventing Frauds and Abuses 'attending such Payments,' and for further extending the Benefits thereof to Petty Officers and Seamen, Non-commissioned Officers of Marines, and Marines, serving or who may have served on board any of his Majesty's Ships;* and by another Act passed in the thirty-second year of the reign of his late Majesty, intituled *An Act for extending certain Acts therein mentioned to Petty Officers and Seamen, Non-commissioned Officers of Marines and Marines, serving or who may have served on board any of his Majesty's Ships, and residing in* Ireland; petty officers and seamen non-commissioned officers of marines and marines in his Majesty's navy are enabled to cause payment of their wages to be made in the cases in those Acts mentioned to their wives and relations by remittance bills; but doubts have been entertained whether the said Acts authorize payment by such bills to such petty officers seamen non-commissioned officers of marines and marines themselves when discharged or paid off from his Majesty's service; and it is expedient to remove such doubts and to alter the form of remittance bills hitherto used in such cases: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, such petty officers and seamen non-commissioned officers of marines and marines, shall and may be enabled and empowered to obtain payment of their wages by remittance bill or bills to themselves or to their wives or relations as provided by the said Acts, whether they such petty officers and seamen non-commissioned officers of marines and marines be still serving his said Majesty his heirs or successors, or discharged or paid off from the service; which said remittance bills shall be in the following form or to the like effect:

32 G. 3. c. 33.

32 G. 3. c. 67.

Petty Officers and Seamen, &c. may obtain Payment of their Wages by Remittance Bills, whether serving or paid off.

Form of Remittance Bill.

'By virtue of the Act, second *George* the Fourth, Chapter 'No.

day of

'Sir,

£. s. d.

'PAY to of on
'producing and delivering the duplicate
'hereof the sum of being on
'account of the wages of
'belonging to his Majesty's ship the
'if the same be demanded within six calendar
'months from the date hereof, otherwise you
'are to return this bill to the Treasurer of the
'Navy, at the Pay Office of the Navy, *London.*

To { The Receiver General of the Land Tax in the County of
The Collector of the Customs at the Port of
The Collector of the Excise at
The Clerk of the Treasurer of the Navy at }

(Signed) Commissioner of the Navy.

(Attested) Clerk to the Treasurer of the Navy.

N. B.—The personating or falsely assuming, or procuring any other to personate or falsely assume the name or character of any inferior officer or seaman non-commissioned officer of marines or marine, or the wife or relation executor administrator or creditor of any such officer or seaman non-commissioned officer of marines or marine, in order to receive the wages due to such officer or seaman non-commissioned officer of marines or marine, is made felony without benefit of clergy, by the 55th *George* the 3rd, cap. 60.

The officer to whom the aforegoing bill is addressed is directed by the above-mentioned Acts of Parliament to examine the duplicate thereof when presented, and inquire into the truth by the oath of the person presenting the same, and being satisfied he is to testify to that purpose upon the back of the bill and pay the amount without fee or reward; but if he shall not be able to pay the amount from not having public money sufficient in his hands, he shall note the cause of his refusing payment, and shall appoint another day within one month at farthest from that time, and shall deliver back the bill so noted to the person presenting it; and if upon complaint to the commissioners of the Board of Revenue on whose officer such bill shall have been drawn it shall appear that such officer hath unnecessarily delayed payment taken any fee or made any deduction whatsoever, he shall be fined in a sum not exceeding fifty pounds.

Navy Office. { To be paid out of money received by the right honourable the Treasurer of his Majesty's Navy for the payment of seamen's wages.

I HAVE examined the duplicate hereof, and inquired into the truth of it, on the oath of , and am satisfied that is the real person mentioned therein.

Collector.

Dated at this day of

II. And be it further enacted, That all and every the enactments provisions clauses regulations powers authorities pains penalties and forfeitures contained in an Act passed in the fifty-fifth year of the reign of his late Majesty, intituled *An Act to repeal several Acts relating to the Execution of Letters of Attorney and Wills of Petty Officers Seamen and Marines in his Majesty's Navy, and to make new Provisions respecting the same*, applicable to the remittance bills in that Act mentioned, shall be deemed and taken and the same are hereby declared to be applicable to the remittance bills authorized by this Act as fully and effectually to all intents and purposes as if the same were repeated in this Act.

Provisions of 55 G. 3. c. 60. applicable to Remittance Bills extended to this Act.

III. And whereas it is expedient that the provisions in the said last-mentioned Act should be extended to the cases herein-after mentioned; Be it therefore further enacted, That if any person or persons shall cause or procure any other person to sign or subscribe or utter or publish any such false petition or application to the treasurer or paymaster of his Majesty's navy for the time being as is mentioned in the said last-mentioned Act for any of the purposes mentioned in that Act; or if any person or persons shall cause or procure any other person to demand or receive any wages pay prize money bounty money or other allowance of money, due or supposed to be due for or in respect of the services of any such petty officer or seaman non-commissioned officer of marines or marine upon or by virtue of any certificate from the inspector of seamen's wills or his assistant, knowing such certificate to have been obtained by false representations or pretences; every such person shall on being convicted of any such offence in due form of law be transported beyond the

Persons procuring others to sign or utter false Applications to the Treasurer or Paymaster of the Navy, or procuring Persons to apply for Pay, &c. on false Certificates, shall be liable to Transportation for Seven Years.

No. CVI. 1 & 2 Geo. IV. c. 49.

seas for the term of seven years, in like manner as persons convicted of felony are directed to be transported by the laws and statutes of this realm.

Persons procuring others to utter forged Letters of Attorney, or to apply for Pay on Probates of forged Wills, &c. guilty of Felony.

IV And be it further enacted, That if any person or persons shall cause or procure any other person to utter or publish as true any false forged counterfeited or altered letter of attorney bill ticket certificate purporting to be a certificate from the inspector of seamen's wills and powers, or his assistant, assignment, last will or other power or authority whatsoever mentioned in that Act, for the purpose and with the intention therein also mentioned, knowing the same to be false forged counterfeited or altered; or shall cause or procure any other person to demand or receive any wages pay prize money bounty money or other allowances of money due or supposed to be due for or in respect of the services of any such petty officer seaman non-commissioned officer of marines or marine or other person as in that Act mentioned performed or supposed to have been performed on board any of his Majesty's ships or vessels upon or by virtue of any probate of any will or letters of administration, knowing the will on which such probate shall have been obtained to be false forged and counterfeited, or knowing the probate of such will or such letters of administration as last aforesaid to have been obtained by means of any such false oath as in that Act mentioned with the intention therein also mentioned; every such person or persons so offending and being thereof convicted according to due course of law shall be deemed guilty of felony and shall suffer death as a felon without benefit of clergy.

[No. CVII.] 1 & 2 George IV. c. 75.—An Act to continue and amend certain Acts for preventing Frauds and Depredations committed on Merchants, Ship-owners and Underwriters, by Boatmen and others; and also for remedying certain Defects relative to the Adjustment of Salvage in *England*, under an Act made in the Twelfth Year of Queen *Anne*.—[2d *July* 1821.]

1 & 2 Geo. IV. c. 75.

49 G. 3. c. 122.

WHEREAS by an Act passed in the forty-ninth year of his late Majesty King *George* the Third, intituled *An Act for preventing Frauds and Depredations on Merchants Ship-owners and Underwriters by Boatmen and others; and also for remedying certain Defects relative to the Adjustment of Salvage in* England, *under an Act made in the Twelfth Year of Queen* Anne; which Act was to continue in force for seven years and from thence to the end of the next session of Parliament: And whereas by an Act passed in the fifty-third year of his late Majesty King *George* the Third the said above recited Act (except so far as the same was altered and extended) was further continued in force for seven years from the passing of the said Act and from thence to the end of the next session of Parliament and no longer: And whereas it is fit and expedient that the said above recited Acts should be further continued except so far as the same are altered by this Act: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That all pilots boatmen hovellers or other persons who shall take up any anchors cables tackle apparel furniture stores or materials or any goods or merchandize which may have been parted with cut from or left by any ship or vessel within any harbours rivers or bays or on any of the coasts of this kingdom, whether the same ship or vessel shall be or shall have been in distress or otherwise, and which shall have been weighed swept for or taken possession of by any such boatman pilot hoveller or other person, shall send a report in writing of the articles so found and stating the marks if any thereon, and also an accurate and particular description of the bearings distances and situations and time when and where the same were so found to a deputy vice-ad-

Pilots and others to deposit Anchors, Cables and other Ships' Materials taken Possession of by them, in the Places to be appointed by this Act.

miral or his agent, at or near to the port or place where such boatman pilot hoveller or other persons shall first arrive with such articles within forty-eight hours after his or their arrival at such port or place or before he or they shall leave the port if he or they shall quit it before that time shall expire; and shall also within such period as aforesaid deliver such articles so found into a proper warehouse or such other place as the vice-admiral of each county shall appoint for safe custody until the same shall be claimed by the owner or owners thereof or his her or their agent or agents and the salvage together with such other charges and expences as are herein-after directed to be paid in respect of such articles by him or them, or security given for the payment thereof to the satisfaction of the salvor or salvors thereof; and every such pilot boatman hoveller or other person who shall wilfully and fraudulently keep possession of or retain or conceal or secrete any anchors or cables tackle apparel furniture stores or materials or any goods or merchandize, or deface take out or obliterate the marks and numbers thereon or alter the same in any manner with intent thereby directly or indirectly to prevent the discovery and identification of such articles so found weighed swept for or taken possession of as aforesaid, and shall not report and deliver the same at some proper warehouse or other place in the manner aforesaid and within the time herein-before limited, shall forfeit all claim to salvage and shall on conviction be adjudged and deemed guilty of receiving goods knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore.

Concealing such Articles forfeits Claim to Salvage, and subjects the Offender to Punishment.

II. And be it further enacted, That every deputy vice-admiral or his agent to whom any such report shall be sent shall within two days forward the same or a true copy thereof to the secretary of the corporation of the Trinity House of *Deptford Strond* in *London*, and the same shall be placed by the said secretary in some conspicuous situation for the inspection of all persons choosing to inspect and examine the same: Provided always, that no report shall be forwarded by such deputy vice-admiral or his agent to the said corporation of the Trinity House of *Deptford Strond* until the articles so to be deposited as aforesaid, for and in respect of which a report is required to be made as herein-before is directed, shall amount in value to the sum of twenty pounds.

Deputy Vice-admiral to send Report of Goods deposited to the Trinity House.

No Report made until the Articles amount to 20*l.*

III. And be it further enacted, That it shall be lawful for any deputy vice-admiral or his agent to seize and detain any such articles as shall not have been reported in the manner herein-before directed; and upon such seizure such deputy vice-admiral or his agent shall deposit the same in the warehouse or other place to be appointed as aforesaid, and shall within two days thereafter send a report in writing of the articles so seized and stating the marks (if any) thereon to the said corporation of the Trinity House of *Deptford Strond* as before directed to be made public as aforesaid; and every such deputy vice-admiral or his agent so seizing, who shall not make such report as aforesaid within two days after seizure as aforesaid, shall on conviction before any justice of the peace or magistrate upon the oath of one credible witness or on the confession of the party offending forfeit and pay the sum of twenty pounds for every such neglect together with double the value of the goods so seized, one half of which penalty shall be paid to the informer and the other half to the poor of the parish or township where such offence shall be committed; and every deputy vice-admiral or his agent who shall make any such seizure without any previous information being given to such deputy vice-admiral or his agent, shall on the same articles being claimed by and delivered to the owner thereof or his or her agent be entitled to receive such sum of money as shall be equal to one-third part of the value thereof after the payment of the duties and any charges incidental to the recovery and preservation of the same.

Deputy Vice-admiral may seize Goods not reported and deposited, and shall make Report thereof to the Trinity House, on Penalty of 20*l.* and Double Value of the Seizure.

One-third of Value of Goods allowed on being claimed by the Owner.

IV. Provided always and be it further enacted, That if the owner and deputy vice-admiral or agent so seizing cannot agree on the value of the articles, such value shall be ascertained in like manner as is herein-after directed with regard to salvage, or be referred to the decision of the High Court of Admiralty.

Mode of ascertaining the Value of Articles seized.

No. CVII.

1 & 2 Geo. IV. c. 75.

V. Provided also and be it further enacted, That if any such seizure shall have been made in consequence of any information given to any such deputy vice-admiral or his agent, the deputy vice-admiral or his agent so seizing shall only be entitled to receive from the owners or their agents of the articles one-sixth part of the value thereof, and one other one-sixth of such value shall be paid to the person who shall have given the information, the value of such articles to be ascertained in manner aforesaid.

If Deputy Vice-admiral seize by previous Information, he and Informer to divide 2-6th Parts.

If Articles not claimed within a limited Time, to be sold according to 12 Anne, c. 18. and if they shall have been seized, the Deputy Vice-admiral seizing and the Person informing shall be equally entitled to Salvage.

VI. And be it further enacted, That if any such articles so reported and delivered into the warehouse or other place as aforesaid shall not be claimed within a year and a day after such report shall have been transmitted to the said corporation of the Trinity House of *Deptford Strond* as before mentioned, the same shall be sold and a certificate of such sale shall be delivered to the purchaser thereof under the directions of the High Court of Admiralty, and the monies arising from the sale thereof be applied in the manner directed in and by an Act passed in the twelfth year of the reign of her late Majesty Queen *Anne*, intituled *An Act for preserving all such Ships and Goods thereof which shall happen to be found on Shore, or stranded on the Coasts of this Kingdom, or any other of her Majesty's Dominions;* and if the same shall have been seized by the deputy vice-admiral or his agent as aforesaid, then the deputy vice-admiral or agent so seizing and the person who shall have given such information as shall have led to the seizure (if any such information shall have been given) shall be equally entitled to the salvage which shall be allowed by the High Court of Admiralty to the salvors in the case of unclaimed property.

If the Owners and Salvors cannot agree respecting the Salvage, Three Justices shall determine the Difference.

VII. And be it further enacted, That if the salvors of any such articles or any goods so found weighed swept for or taken possession of as aforesaid and so lodged and reported as aforesaid and the owner or owners thereof or his her or their agent or agents cannot agree respecting the amount of salvage to be paid for in respect of the same or the value thereof, as the case may be, then the matter in difference shall be determined by any three justices of the peace residing near to the place where such articles or goods shall be deposited, who shall begin to proceed in their inquiry as to such matters in dispute within forty-eight hours after such difference shall be referred to them for their determination thereof; and if they cannot agree respecting the same, then it shall be lawful for them to nominate any third person conversant in maritime affairs at their option who shall ascertain the amount of the salvage to be paid or the value thereof as the case may be within forty-eight hours after he shall have been so nominated as aforesaid; and the said justices and such third person so nominated as aforesaid shall have full power and authority whenever they see occasion to examine the parties or their witnesses upon oath, which oath they are hereby authorized to administer.

If the Justices cannot agree, they shall nominate a Person, conversant in Maritime Affairs, who shall determine.

Justices may in like manner determine upon Remuneration to be made for Services rendered to Ships in Distress or otherwise.

VIII. And be it further enacted, That it shall also be lawful for the said justices to decide in the like manner and within the same time as is hereinbefore directed with regard to salvage on all claims and demands whatsoever which shall or may be made by pilots boatmen and other persons for service of any description (except pilotage) to be rendered by them to any ship or vessel, as well for carrying off from the shore to such ship or vessel any anchors cables or other stores from any port or ports of the coast of *England* and *Wales* and *Berwick-upon-Tweed*, or for the saving and preserving any goods or merchandize which may have been wrecked stranded or cast away from any ship or vessel, or for being instrumental in saving the life or lives of any person or persons on board the said ship or vessel, the master owner or owners of such ship or vessel or his her or their agent or agents being present with such justices; and that the said justices shall have full power and authority to hear and determine on all cases whatever of services rendered by pilots boatmen and others to ships or vessels (except pilotage) whether such ships or vessels shall at the time be in distress or not, and that they shall have the like power of examining the parties or their witnesses upon oath as last herein-before

Decision of Justices final, unless an Appeal to Court of Admiralty.

directed; and the decision of such justices shall be final and conclusive on all parties, save and except in such cases in which an appeal shall be interposed by either party to the High Court of Admiralty, such appeal to be interposed within thirty days after the award of the justices or such person so appointed as aforesaid.

Persons dissatisfied may appeal to the High Court of Admiralty; but the Goods to be restored to the Owners on giving Bail.

IX. And be it further enacted, That in case the party or parties so claming to be entitled to salvage or the party or parties who is or are to pay the same or their agents shall be dissatisfied with such award and decision of the justices, or of the person so to be nominated by them as aforesaid, it shall be lawful for either of them respectively within ten days after such award is made, but not afterwards, to declare to the justices or such other person to be nominated by them as aforesaid his her or their desire of obtaining the judgment of the High Court of Admiralty respecting the said salvage, and thereupon he she or they shall proceed by taking out a monition within thirty days from the date of the said award; but in such case the said justices are hereby required and empowered to deliver to the owners and proprietors or their agents any such anchor or cable goods or other articles respecting which any claim for salvage shall be made upon the owners or proprietors thereof his her or their agent, giving good and sufficient bail in the amount of the sum awarded for salvage or compensation, and which bail shall be taken by a commissioner for taking examinations in prize cases if there shall be one in the port or place where such difference shall arise; but if there shall be no such commissioner there, then the said justices to whom such difference shall have been referred or either of them, or any other of his Majesty's justices of the peace, are and is hereby authorized to take the same; and the commissioner or justice who shall take such bail shall certify the same according to the form contained in the schedule hereunto annexed, and transmit the same without delay to the High Court of Admiralty, together with a true certificate in writing of the gross value of the whole of the articles respecting which salvage shall be claimed, and also a copy of such proceedings and awards on unstamped paper, certified under the hand of such commissioner or justice taking the bail as aforesaid; and the same shall be admitted by such Court of Admiralty as evidence in the cause.

Bail to be taken by a Commissioner in Prize Cases, if there is one in the Place, otherwise by a Justice.

Persons named by Justices to decide on the Amount of Salvage, &c. may demand from the Owner 2*l.* 2*s.*

X. And be it further enacted, That it shall and may be lawful for the person so to be named by the said justices as aforesaid who shall decide on the amount of salvage to be paid, or on the value of the articles, or on the remuneration to be made to persons rendering assistance to ships or vessels, or persons as aforesaid, to demand and receive of and from the owner or owners of the articles saved, or of the ships or vessels in behalf of which the services may have been rendered, or his her or their agents or agent, a sum of money not exceeding two pounds two shillings, and such owner or owners or his her or their agent or agents shall and is and are hereby required to pay to the person so to be nominated by the said justices nominated as aforesaid such fee or reward immediately after he shall have made his award or decision and on delivery of the same.

Persons cutting away or defacing Buoy-ropes, &c. to be deemed guilty of Felony, &c.

XI. And be it further enacted, That if any person or persons shall wilfully cut away cast adrift remove alter deface sink or destroy, or shall do or commit any act with intent and design to cut away cast adrift remove alter deface sink or destroy, or in any other way injure or conceal any buoy buoy-rope or mark belonging to any ship or vessel, or which may be attached to any anchor or cable belonging to any ship or vessel whatever, whether in distress or otherwise, such person or persons so offending shall on being convicted of such offence be deemed and adjudged to be guilty of felony, and shall be liable to be transported for any term not exceeding seven years, or in mitigation of such punishment to be imprisoned for any number of years, at the discretion of the court in which the conviction shall be made.

Persons fraudulently purchasing or receiving Anchors, Cables, &c. shall be considered Receivers of stolen Goods.

XII. And be it further enacted, That if any person shall knowingly and wilfully, and with intent to defraud and injure the true owner or owners thereof, or any person interested therein as aforesaid, purchase or

No. CVII. 1 & 2 Geo. IV. c. 75.

receive any anchors cables or goods or merchandize which may have been taken up weighed swept for or taken possession of, whether the same shall have belonged to any ship or vessel in distress or otherwise, or whether the same shall have been preserved from any wreck, if the directions herein-before contained with regard to such articles shall not have been previously complied with, such person or persons shall on conviction thereof be deemed guilty of receiving stolen goods knowing the same to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, or be liable to be transported for seven years at the discretion of the court before which he she or they shall be tried.

Masters of Ships bound to Parts beyond the Seas, finding or taking on board Anchors and other Articles, to make Entry in the Log Book, and report the same to the Trinity House, and on their arrival in England deposit the Articles.

XIII. And be it further enacted, That in case the master mate or crew of any ship or vessel bound to parts beyond the seas shall find and take on board of such ship or vessel any anchor cable or any goods or merchandize, or shall receive any anchor cable or any goods or merchandize on board of such ship or vessel from any other person or persons who may have found the same, knowing the same to have been so found, the master mate or other person having the command of such ship or vessel shall make a true entry in the log book of such ship or vessel of the description of the articles so found or taken on board as aforesaid, stating the marks (if any) thereon, and the bearings and distances and other minute description, and the time when and where the same were found and taken on board; and also shall at the first possible opportunity, transmit a report in writing, containing a true copy of such entry in the log book of the said ship or vessel to the said corporation of the Trinity House of *Deptford Strond*, and on the return of such vessel to any Port in *England* or *Wales*, or *Berwick-upon-Tweed*, he shall deliver the same articles into the possession of a deputy vice-admiral or his agent in or nearest to such port at which he shall first arrive, and within twenty-four hours after his arrival with the like report as is herein-before directed; and such deputy vice-admiral or agent is hereby required to transmit such report to the said corporation of the Trinity House at *Deptford Strond* to be placed by the said corporation for inspection in like manner as aforesaid; and if the same shall not be claimed by the owner or owners thereof, or his her or their agent, within a year and a day after such report shall be transmitmitted, the same shall be sold and disposed of according to law with regard to unclaimed property; and in default thereof, or if the master of such ship or vessel shall sell or dispose of such anchor cable goods or merchandize to any person or persons whomsoever, or shall not upon his first return to any port within *England* and *Wales* or *Berwick-upon-Tweed* report and deliver the same according to the provisions of this Act, he shall for every such offence forfeit all claim to salvage, and on being thereof lawfully convicted before any justice of the peace or magistrate on the oath of one credible witness, or on the confession of the party offending, forfeit and pay any sum not exceeding one hundred pounds nor less than thirty pounds, one half of which penalty shall be paid to the informer and the other half to the president and governors for the relief and support of such maimed and disabled seamen, and of the widows and children of such as shall be killed slain or drowned in the merchants service, under an Act of Parliament made in the twentieth year of the reign of his late Majesty King *George* the Second, intituled *An Act for the Relief and Support of maimed and disabled Seamen, and the Widows and Children of such as shall be killed, slain, or drowned in the Merchant Service;* and shall also forfeit and pay double the value of such articles to the owners or owner thereof.

If not claimed to be sold.

Penalty for making Default not exceeding 100*l.* nor less than 30*l.*

Application of Penalty.

20 G. 2. c. 38.

Fees to be paid for Reports, 1*l.* 1*s.* to the Deputy Vice-Admiral, and 1*l.* 1*s.* to the Secretary of the Trinity House.

XIV. And be it further enacted, That it shall and may be lawful for the deputy vice-admiral or his agent who shall make the report required by this Act to the said corporation of the Trinity House of *Deptford Strond* as aforesaid to receive of and from the owner or owners of the articles in respect of which the report shall be made, or if the same are not claimed, then out of the produce of the sale thereof, the sum of one pound one shilling for each report; and that it shall also be lawful for the secretary or other proper officer of the said corporation of the Trinity House

of *Deptford Strond* to receive in like manner as last-mentioned the sum of one pound one shilling for each report so to be received by the said corporation, to be made public by them as aforesaid, which last-mentioned sum shall be paid to the said deputy vice-admiral or his agent before the delivery of the goods, and accounted for by him to the Trinity House.

Punishing Pilots and others selling or disposing of Anchors or Cables in Foreign Countries.

XV. And whereas pilots hovellers boatmen and other persons in small vessels have for many years conveyed anchors and cables which may have been weighed swept for or taken possession of by them as aforesaid, or which they may have purchased of other persons, knowing them to have been weighed swept for or taken possession of without being reported as aforesaid, to foreign countries, and there sold and disposed of to the manifest injury and loss of the owners thereof; For remedying whereof be it further enacted, That every pilot hoveller boatman or the master of any such vessel who shall convey any such anchor or cable to any foreign port harbour creek or bay and there sell and dispose of the same shall be deemed and adjudged guilty of felony, and shall be transported for any term not exceeding seven years.

Penalty on Dealers in Marine Stores not having their Names painted on their Store-houses, or cutting up any Cable without a Permit from a Magistrate.

XVI. And be it further enacted, That all persons who shall trade or deal in buying and selling anchors cables sails or old junk old iron or marine stores of any kind or description shall have their names with the words "Dealer in Marine Stores" painted distinctly in letters of not let less than six inches in length upon the front of all their storehouses warehouses and other deposits for such goods; and in default of their so doing they shall on conviction before any justice or justices of the peace or magistrate or magistrates of any jurisdiction where such storehouse warehouse and depôt shall be, upon the oath of one credible witness or on confession of the party offending, forfeit and pay a sum not exceeding twenty pounds nor less than ten pounds, one half of which penalty shall be paid to the informer and the other half to the poor of the parish or township where such offence shall be committed; and that it shall not be lawful for such dealers or traders to cut up any cable, or any part of a cable exceeding five fathoms in length, or uncant untwine or unlay the same into junk or paper stuff on any pretence whatsoever without first obtaining a permit from some justice of the peace or magistrate residing near to the residence of such dealer, which permit shall not be granted unless an affidavit shall have been made that the cable so intended to be cut up had been *bona fide* purchased and without fraud by the party so intending to cut up the same, and without any knowledge or suspicion on his or her part that the same had been or were dishonestly come by; and in which affidavit shall also be specified the particular quality and description of such cable and the name or names of the seller or sellers thereof, which affidavit shall be recited and set forth at length in the permit thereupon granted on pain of forfeiting for the first offence any sum not exceeding twenty pounds nor less than ten pounds; and for every second or further offence any sum not exceeding fifty pounds nor less than twenty pounds, to be recovered before any justice of the peace; and one half thereof to go to the informer and the other half to the poor of the parish in which such offence shall have been committed.

Dealers to keep an Account of old Stores bought by them.

to advertise before cutting up of Cordage.

XVII. And be it further enacted, That for the more effectual prevention of such frauds all dealers in such marine stores as aforesaid shall keep a book or books, fairly written, in which entries shall be from time to time regularly made of all such old marine stores as shall be by them from time to time bought, containing a true account and description of the times when the same were so respectively bought by them, and of the names and places of abode of the respective sellers thereof; and before any person who shall obtain such permit for the cutting up of any such cable (as hereinbefore required to be obtained) shall proceed to cut up the same by virtue thereof, there shall be published by the space of one week at least before the cutting up the same one or more advertisement or advertisements in some public newspaper printed nearest to the storehouse warehouse or depôt where the articles shall be deposited, notifying that such party had obtained such permit for the purpose of cutting up

such cable and of such kind and quality as therein described, and also specifying the place where such articles shall be deposited; whereupon it shall be lawful for all and every person or persons who may have just cause to suspect that such articles are the property of such person or persons, and shall have verified upon oath the fact of such his or their suspicion before any justice of the peace or magistrate residing near to the said storehouse warehouse or depôt, by warrant for that purpose thereupon granted to require of and from such dealer who shall have so advertised, and shall be so sworn to be suspected as aforesaid, the production and examination of the book or books of entries hereby required by him or her to be kept, and inspect and examine the cables described in such permit; and in case any such dealer when so thereunto required as aforesaid shall neglect or refuse to produce to the person named in such warrant, as the person on whose oath the same shall have been obtained, the book or books containing the entries of such dealer so required to be made therein as aforesaid, or shall neglect to keep any such book or books in which entries containing accounts of the several particulars herein-before required to be entered shall be made, or to permit such inspection or examination as aforesaid, or shall after obtaining such permit for the cutting up of any such cable and before the cutting up of the same, neglect to publish such one or more advertisement or advertisements relative thereto as is herein-before directed and required, the dealer or dealers so offending in all or any of the particulars herein-before mentioned shall forfeit and pay for every such offence being his her or their first offence any sum not exceeding twenty pounds nor less than ten pounds, and for every second or further offence any sum not exceeding fifty pounds nor less than twenty pounds, one half of which penalty shall, on conviction before any justice of the peace or magistrate residing near as aforesaid, be paid to the informer, and the other half to the poor of the parish or township in which such offences shall be committed; and in case any of the penalties by this Act imposed shall not be paid with the charges incident to the conviction immediately upon such conviction, the same shall and may be levied by warrant under the hand and seal of such justice of the peace or magistrate upon the goods and chattels of any such offender or offenders; and in case no sufficient distress shall be found then every such offender or offenders shall and may be committed by any justice of the peace or magistrate as aforesaid to gaol in case of any first offence for the space of six calendar months, and in case of any second or further offence for the space of twelve calendar months unless the said penalty and the charges shall be sooner paid.

Persons may demand Inspection of Books.

Penalty on refusing Inspection, &c.

Recovery of Penalties.

Manufacturers of Anchors to place Marks on Anchors and Kedge Anchors.

XVIII. And be it further enacted, That all manufacturers of anchors and kedge anchors shall place his her or their name or names together with a progressive number and also the weight of the anchor in legible characters upon the crown and also upon the shank under the stock of each anchor which he she or they shall manufacture; and shall also place his her or their name or names together with a number and also the weight of the kedge anchor upon the crown and also upon the shank near to the stock of every kedge anchor which he she or they shall manufacture; and in case any such manufacturer shall neglect to place such name number or weight in the manner herein-before directed and required, every such person or persons so offending shall on conviction before any justice of the peace or magistrate on the oath of one credible witness or on the confession of the party so offending forfeit and pay any sum not exceeding five pounds nor less than forty shillings, one half of which penalty shall be paid to the informer and the other half to the poor of the parish or township in which such offence shall be committed.

Penalty on Neglect.

Form of Conviction.

XIX. And for the more easy and speedy conviction of offenders against this Act, Be it further enacted, That all and every justice or justices of the peace before whom any person shall be convicted of any offence against this Act, shall and may cause the conviction to be drawn up according to the following form; *videlicet*,

BE it Remembered, That on the day of in the year of our Lord *A. B.* is con-

'victed before me [*or*, us] one [*or*, two, *as the case may be*] 'of his Majesty's justices of the peace for the [*here specify the 'offence and the time and place when and where committed as the case may be*] 'contrary to an Act passed in the second year of the reign of King *George* 'the Fourth, intituled [*here insert the title of this Act.*] Given under my 'hand and seal [*or*, our hands and seals] the day and year first above 'written.'

And no certiorari or other writ or process for the removal of any such conviction or any proceedings thereon into any of his Majesty's courts of record at *Westminster* shall be allowed or granted.

Appeal from Conviction to the General Quarter Sessions.

XX. And be it further enacted, That it shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace before mentioned of any offence or offences against this Act within three calendar months next after such conviction to appeal to the justices of the peace assembled at the general quarter sessions holden for the county city or place where the matter of appeal shall arise, first giving ten days' notice of such appeal to the person or persons appealed against and of the matter thereof and entering into a recognisance before some justice of the peace for such county city or place with two sufficient sureties conditioned to try such appeal and for abiding the determination of the court therein; and such justices at the general quarter sessions shall upon due proof of such notice having been given and recognisance entered into hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction and award such costs to either party as to them shall seem just and reasonable, and the decision of the said justices therein shall be final binding and conclusive; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form only or be removed by certiorari or any other writ or process whatsoever into any of his Majesty's courts of record at *Westminster* or elsewhere; any law or statute to the contrary thereof in anywise notwithstanding.

Inhabitants may be competent Witnesses.

XXI. Provided always and be it further enacted, That the inhabitants of any parish township or place shall be deemed and taken to be competent witnesses for the purpose of proving the commission of any offence against this Act within the limits of such parish township or place, notwithstanding the penalty incurred by such offence or any part thereof is or may be given or applicable to the poor of such parish township or place or otherwise for the benefit or use or in aid or in exoneration of such parish township or place.

Offences may be tried in the County where Articles found, or if sold in Foreign Parts, where Offenders reside.

XXII. And be it further enacted, That all felonies misdemeanors and other offences under this Act shall and may be laid to be committed and shall be tried in any city or county (being a county) where any such article matter or thing in relation to which such offence shall have been committed shall have been found in the possession of the person committing the offence; or if the same shall have been sold in foreign parts then in the county or place in which the person selling the same shall reside.

Act not to alter the Statute of 48 G. 3. c. 130.

XXIII. Provided always and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to or be in force within the limits specified and directed in an Act passed in the forty-eighth year of the reign of his late Majesty, intituled *An Act for preventing the various Frauds and Depredations committed on Merchants, Shipowners and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain Defects relative to the Adjustment of Salvage under a Statute made in the Twelfth Year of the Reign of her late Majesty Queen* Anne, or in any manner to affect any of the provisions of the said Act, but the said recited Act shall remain in full force within the limits therein specified as if this Act had not been passed: Provided also, that nothing in this Act contained shall extend or be construed to extend to repeal take away or alter any of the clauses powers or provisions contained in an Act of Parliament made in the forty-eighth year of the reign of his late Majesty, intituled *An Act for the better Regulation of Pilots, and of the Pilotage of Ships and Vessels navi-*

Reservation of the Statute of 48 G. 3. c. 104.

No. CVII. 1 & 2 Geo. IV. c. 75.

gating the British *Seas;* but that the said Act shall remain in full force as if this Act had not been passed.

Reservation of the Rights of the High Court of Admiralty, &c.

XXIV. Provided also and it is hereby further declared, That this Act or any thing herein contained shall not extend or be construed to extend to the taking away abridging prejudicing or impeaching in any manner whatever the jurisdiction of the High Court of Admiralty of *England* or the jurisdiction of the Admiralty Court of the Cinque Ports two ancient Towns and their Members or of the Admiralty Court of the borough of *Great Yarmouth* in the county of *Norfolk* or of the Admiralty Court of the borough of *Dunwich* in the county of *Suffolk* or of the Admiralty Court of the borough of *Southampton* in the county of *Hants* or of the Admiralty Court of the borough of *Southwold* in the county of *Suffolk* or of the Admiralty Court of the borough of *Lynn Regis* in the county of *Norfolk;* but that it shall and may be lawful for the said courts respectively and the judge or judges thereof for the time being to have use exercise and enjoy jurisdiction over all such matters rights and offences as they have heretofore had used exercised and enjoyed as fully and effectually to all intents and purposes whatever as if this Act had not been made; any thing herein contained to the contrary thereof in anywise notwithstanding.

Reservation of the Rights of the Crown and of Lords and Ladies of Manors.

XXV. Provided also and it is hereby enacted, That neither this Act nor any thing herein contained shall any ways extend or be construed to extend to deprive or in any ways prejudice the rights of his Majesty his heirs or successors or any claiming under them or any of them or any patentee or grantee of the Crown or any lord or lords or lady or ladies of any manor or manors whatsoever; but that such respective rights shall be enjoyed in as full ample and beneficial a manner in every respect as if this Act had never been made.

Lords of Manors not to lay Claim to Wrecks till Report of the same be made to the Deputy Vice-admiral of the Coast, &c.

XXVI. And be it further enacted, That no lord or lady of any manor or other person who may be entitled to or claim to be entitled to wreck of the sea or to any goods found jetsam flotsam or lagan shall be entitled to appropriate such wreck or goods to his her or their own use or otherwise to dispose thereof until he she or they shall have caused a report thereof in writing to be given to the deputy vice-admiral of that part of the coast where the same shall have been stranded wrecked or found or to his agent; or if there shall be no such deputy vice-admiral or agent residing within the distance of fifty miles then to the corporation of the Trinity House of *Deptford Strond;* which report shall contain an accurate and particular description of the wreck or goods found and of the place or places and time or times where and when the same may have been found and of any marks that may be thereon and of such other particulars as may the better enable the owner or owners thereof to recover the same, and also of the place or places where the same are deposited and may be found and examined by any person claiming any right to such wreck or goods, nor until the full expiration of a year and a day after the delivery of such notice, any thing in any law to the contrary notwithstanding; and the deputy vice-admiral or agent aforesaid shall within forty-eight hours after receiving such report as aforesaid transmit a copy thereof to the secretary of the corporation of the Trinity House of *Deptford Strond,* upon pain of forfeiting for any neglect to transmit such account as aforesaid the sum of fifty pounds to any person who will sue for the same; and the said secretary shall cause such account to be placed in some conspicuous situation for the inspection of all persons claiming to inspect and examine the same: Provided always, that nothing herein contained shall extend or be construed to extend to repeal or in any manner to affect any of the provisions of an Act passed in the fifty-second year of his late Majesty, intituled *An Act for charging Foreign Liquors and Tobacco, derelict, jetsam, flotsam, lagan, or wreck, brought or coming into* Great Britain, *with the Duties payable on Importation of such Liquors and Tobacco.*

Deputy Vice-admiral to transmit a Copy of Report to the Secretary of the Trinity House.

Penalty 50*l.*

52 G. 3. c. 159.

Perishable Goods may be sold with Consent of a Justice.

XXVII. And be it further enacted, That when any goods which shall be found or taken possession of by any lord or lady of any manor or per-

son entitled or claiming to be entitled to wreck of the sea or to goods found flotsam jetsam or lagan or his or her agent or servant, or by any vice-admiral or his deputy or agent, or by any officer or other person whatsoever acting by or under the authority of this Act or of an Act passed in the present session of Parliament, intituled *An Act to continue and amend certain Acts for preventing various Frauds and Depredations committed on Merchants, Ship-owners and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports*, shall be of so perishable a nature or so much injured or damaged that the same cannot be kept, then and in every such case such goods shall and may at the request of any of the persons interested or concerned therein or in the saving and preserving thereof, by and with the consent and approbation of some justice of the peace not interested or concerned in the same or in the saving or preserving thereof and in the presence of such justice or of some person for that purpose specially appointed by such justice, be sold by publick auction or private contract as such justice may direct by some writing under his hand, which writing shall contain an accurate and particular account of the goods and of the marks that may be thereon or other particulars belonging thereto and of the times and places of the finding and intended sale thereof; and the money raised by such sale, after defraying the reasonable expences of the sale to be settled and allowed by such justice, shall be deposited and remain in the hands of the lord or lady of the manor or other person or deputy vice-admiral, who would have received the custody of the goods so sold, to abide and be subject and liable to the claims of all persons in like manner as the goods themselves would be subject and liable if remaining unsold: Provided always, That all persons required to transmit reports to the deputy vice-admiral of the finding of any goods shall in case of any such sale as last aforesaid likewise transmit to such deputy vice-admiral an account of such sale and of the proceeds thereof; and the said deputy vice-admiral shall forward such reports to the secretary of the Trinity House of *Deptford Strond* within the like periods, and under and subject to the like penalties and forfeitures for any neglect therein, as in cases of any goods found and required to be reported under the provisions of the said recited Act and this Act.

Money to be deposited in the Hands of the Lord of the Manor, &c.

An Account of Sale to be transmitted to the Deputy Vice-admiral.

XXVIII. And be it further enacted, That it shall and may be lawful to and for the commissioners of customs and excise and they are hereby required to permit all goods wares and merchandize saved from any vessel or vessels stranded or wrecked on their respective homeward voyage to be forwarded to the port or ports of their original destination; and also to permit goods wares and merchandize saved from any vessel or vessels stranded or wrecked on their respective outward voyage to be returned to the port or ports at which the same were shipped; but such commissioners are to take security for the due protection of the revenue in respect of such goods wares and merchandize.

Goods saved from Vessels wrecked to be forwarded to the Ports of their original Destination.

XXIX. And be it further enacted, That it shall be lawful for the deputy vice-admiral of the part of the coast where any ship or vessel shall be stranded or wrecked or where any wreck of the sea or goods shall be cast on shore, and for his agent and also for the owner or master of any such ship or vessel and for the owners of any such goods or of any part thereof, and for any officer of the customs or excise and other officer, and for all persons whatsoever employed or acting in aid of or in the assisting of any such deputy vice-admiral officer master or owner as aforesaid in the saving or recovering any such ship or vessel or the cargo stores tackle or other articles belonging to the same, or the preserving the lives of the crew or persons belonging thereto or of any wreck as aforesaid, to pass and repass with their horses carts carriages or servants over any lands near to the part of the sea coast where such vessel shall be so wrecked or stranded or on which such wreck shall be cast without interruption or obstruction by the owner or occupier thereof for the purpose of rendering assistance in saving recovering and preserving any such ship or vessel or goods or stores or any cables anchors spars masts cordage or other tackle or articles belonging to any ship or vessel, or for saving or otherwise assisting in preserving the lives of the crew or of any persons on board of

Carriages may pass over the Lands near the Coast where Vessels are wrecked, for the Preservation of the Wreck, &c.

any such ship or vessel, or for the taking possession of and securing for the benefit of the owners thereof any wreck or goods or other things cast on shore or found on shore or found near thereto, provided there shall be no road by which the parties may pass and repass with as much convenience and expedition as over such lands; and also to place any planks timber or any part of the wreck or any goods or stores removed or saved from any such ship or vessel or any other wreck or goods as aforesaid upon any such land for a reasonable time, until they can be removed to some warehouse or safe place of deposit, making compensation to the occupier of such lands for any damage done by the means aforesaid, which compensation shall be a charge upon the wreck or goods in respect whereof the damage may be done in like manner as salvage; and in case the parties cannot agree as to the amount thereof, then the same shall be ascertained and settled by two justices of the peace or of a third person to be named by them in such manner and within such times as the amount of salvage is directed to be ascertained and settled by the said recited Act in the forty-ninth year of his said Majesty's reign.

Compensation to the Land Occupiers.

If Parties do not agree Two Justices to settle it.

XXX. And be it further enacted, That if any owner or occupier of any land or premises over which any person is authorised by this Act to pass and repass for any of the purposes in this Act before mentioned shall interrupt impede or hinder any such person from passing over his land or premises with horses carts carriages and servants for the purposes in this Act before mentioned or any or either of them by locking his gates or refusing upon request to open the same or otherwise, or shall obstruct or hinder the placing any wreck goods stores or other articles upon his land, or shall prevent their remaining there for a reasonable time until the same can be removed to some warehouse or safe place of publick deposit, such occupier shall forfeit and pay to any person who will sue for the same the sum of one hundred pounds, to be recovered by action of debt.

Penalty on refusing Persons so employed from passing over Lands, &c. 100*l.*

XXXI. And whereas questions have arisen as to the jurisdictions of the courts of record at *Westminster* and of the High Court of Admiralty in cases of salvage of ships and goods performed between high and low water-mark; Be it therefore enacted, That any question in relation to salvage of any ship or vessel or of any goods which shall be performed between high and low water-mark, shall be and be deemed to be within the jurisdiction or cognizance of the High Court of Admiralty or of his Majesty's courts of record at *Westminster*; any thing in any Act or Acts of Parliament to the contrary notwithstanding

Questions of Salvage within the Jurisdiction of the High Court of Admiralty or the Courts of Record at Westminster.

XXXII. And be it further enacted, That in every case in which any damage shall be done by any foreign ship or vessel to any *British* ship or vessel barge boat or other craft, or any buoy or beacon in any harbour port river or creek, and it shall appear on a summary application made to any judge of any of his Majesty's courts of record at *Westminster* or to the judge of the High Court of Admiralty respectively that such damage or loss has probably been sustained or arisen by the misconduct or negligence of the master or mariners of such foreign ship or vessel, then and in such case it shall be lawful for such judge to cause such foreign ship or vessel being in any harbour port river or creek to be arrested and detained until the master or owner or consignee or some agent of the owner master or consignee of such ship or vessel shall undertake to appear and be defendant in any action which may be brought for such loss or damage and give such sufficient security by bail or otherwise for all costs and damages if recovered as shall be directed and ordered by such judge, if it shall upon the trial of such action or suit appear that such loss or damage shall have arisen from such negligence or misconduct as aforesaid; and in such action or suit the person giving security shall be made defendant and shall be stated to be the owner of the foreign ship or vessel doing such damage; and it shall not be necessary in any such action or suit to give any other evidence of the liability of such person to such action or suit than the production of the order of the judge made in relation to such security as aforesaid.

In case of Damage done by a Foreign Vessel in Harbour, &c. any of the Judges may cause the Vessel to be arrested until the Owners, &c. shall undertake to appear Defendant in any Action.

XXXIII. And be it further enacted, That all penalties and forfeitures above the sum of twenty pounds, or which by this Act or by an Act passed in the present session of Parliament, intituled *An Act to continue and amend certain Acts for preventing the various Frauds and Depredations committed on Merchants, Ship-owners and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports*, or any or either of them or by this Act are made to be recoverable by action or suit, shall and may be sued for and recovered in any of his Majesty's courts of record at *Westminster*. Penalties how recoverable. c. 76.

XXXIV. Provided also and it is hereby further enacted and declared, That this Act or any thing herein contained shall not extend or be construed to extend to the taking away abridging hindering prejudicing or impeaching of any grant liberties franchises and privileges heretofore granted to and vested in the corporation of the Trinity House of *Kingston-upon-Hull*, or in the commissioners acting under the provisions of any Act or Acts of Parliament relating to the adjustment of salvage for anchors cables and other ships' materials found in the river *Humber*, or in the masters wardens and brethren of the Trinity Houses of *Newcastle-upon-Tyne* and *Scarborough* respectively; but that the said corporation and the said masters wardens and brethren shall hold and enjoy the same as fully and effectually to all intents and purposes as they might have done in case this Act had never been made; any thing herein contained to the contrary thereof in anywise notwithstanding. Reservation of the Rights of the Trinity Houses of Kingston-upon-Hull, Newcastle-upon-Tyne, and Scarborough.

XXXV. Provided also and it is hereby further enacted and declared, That nothing in this Act shall extend or be construed to extend to prejudice or take away any right property authority or jurisdiction of the mayor of the city of *London* or of the mayor and commonalty and citizens of the city of *London* to in and upon the rivers of *Thames* and *Medway*. Reservation of the Rights of the City of London.

XXXVI. Provided also and be it hereby further enacted, That nothing in this Act contained shall extend or be construed to extend to those parts of the United Kingdom of *Great Britain* and *Ireland* called *Scotland* and *Ireland*. This Act not to extend to Scotland or Ireland.

XXXVII. And whereas it is expedient that the like means of conclusively adjusting and recovering the *quantum* of the monies or gratuities to be paid to the said several persons acting or being employed in the salvage of any ship or vessel or the materials or stores belonging thereto or goods or persons on board thereof, should subsist and be by law applicable in cases where the salvors shall have acted under and by the employment and authority of any magistrate or of the commander or other superior officers mariners or owners of any ship or vessel in distress, as are now by law provided for adjusting the *quantum* of such monies or gratuities which shall have become due in cases where application shall have been first made to the officers of the customs or other the officer or officers in that behalf named and appointed in and by a certain Act made in the twelfth year of the reign of Queen *Anne*, intituled *An Act for preserving all such Ships and Goods thereof which shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions*, and where such assistance shall thereupon have been rendered in pursuance of the provision of that statute; Be it therefore enacted, That all and every the means which in virtue of the said last-mentioned Act subsist and may now be by law applied for the conclusively adjusting and for the recovering of the *quantum* of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship or vessel or the materials or stores belonging thereto or goods, in cases where application shall have been first made pursuant to the said Act to officers of the customs or other the officer or officers in that behalf mentioned, and assistance shall have been thereupon rendered and had in pursuance of the provisions of the said Act, shall be by law applicable and available in like manner to all intents and purposes in cases where the salvors shall have acted under and by the employment and authority of any magistrate or of the commander or other superior officers mariners or owners of any ship or vessel in distress, although no such application For the better Adjustment and Payment of Salvage pursuant to 12 Ann, c. 18.

No. CVII. 1 & 2 Geo. IV. c. 75.

shall have been made to nor any authority or assistance derived from any officer of the customs or other the officer or officers in the said statute in that behalf mentioned; and thereupon, upon payment or tender and refusal of the *quantum* of the monies or gratuities to be paid to the several persons who shall have acted or been employed in such salvage, or in case such payment or tender cannot be made, on security being given for the true payment thereof to the satisfaction of the justices who shall have adjusted such *quantum* or gratuities, it shall not be lawful for any officer of the customs or other person or persons having the possession or custody of such ship vessel materials stores or goods any longer to retain the possession or custody of the same or any part thereof by reason or pretence of any claim or right to a compensation or gratuity of such salvage as aforesaid or for having acted or been employed therein.

Property saved may be sold to defray the Expence of Salvage.

XXXVIII. And be it further enacted and declared, That in all cases it shall be lawful for the owner or owners, or if the owner or owners refuse, for the salvors to sell so much of the property saved as will be sufficient to defray the salvage adjudged and all expences attending the same and such other reasonable charges and expences respecting the said property as shall be allowed by the High Court of Admiralty or by the justices acting in execution of the provisions of this Act; and that on production of an order or decree from the High Court of Admiralty or of an award made by the justices acting in execution of the provisions of this Act, the commissioners of the customs and excise shall be empowered and required and they are hereby empowered and required to allow the sale of such goods aforesaid free from the payment of all duties: Provided nevertheless that in all cases in which they may think it advisable it shall be lawful for the commissioners of the customs and excise to refer any such award which may be produced to them from the justices acting in execution of the provisions of this Act to the judgment and revision of the High Court of Admiralty.

Public Act.

XXXIX. And be it further enacted, That this Act shall be deemed and taken to be a public Act and shall be judicially taken notice of as such by all judges justices and others without being specially pleaded.

SCHEDULE to which this Act refers.

ON the day of in the year of our Lord before me at in the county of [*ship's name,*] *A. B.* [*here insert the names of the salvors against, and name the stores and other articles* (id est) *anchors and cables, &c. as the case may be*] certain goods and merchandizes lately found and taken possession of and belonging to the said ship, whereof was master, and also against the said master and the owners [*or if the owners alone appear by themselves or agents, then leave out the master's name*] of the said goods and merchandize in a cause of salvage [*master's name*] on which day appeared personally of and of who produced themselves as sureties for the said the master and for the owners of the said goods and merchandize, and submitting themselves to the jurisdiction of the high Court of Admiralty of *England* bound themselves their heirs executors and administrators for the master and owners of the said goods and merchandize, in the sum of of lawful money of *Great Britain*, unto the said to answer such salvage and expences or the value of the goods [*as the case may be*] as shall be herein-after decreed by the said court according to the tenor of the Act in that case made and provided; and unless they shall so do they hereby consent that execution shall issue forth against them their heirs executors and administrators goods and chattels wherever the same shall be found to the value of the sum above mentioned.

This bail was duly taken, acknowledged, and received at the time and place above written before me the undersigned commissioner; and I do believe and consider the persons above mentioned sufficient security for the said sum of

[No. CVIII.] 1 & 2 Geo. IV. c. 76.—An Act to continue and amend certain Acts for preventing the various Frauds and Depredations committed on Merchants, Ship-owners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain Defects relative to the Adjustment of Salvage, under a Statute made in the Twelfth Year of the Reign of her late Majesty Queen *Anne*.—[2d *July* 1821.]

No. CVIII. 1 & 2 Geo. IV. c. 76.

WHEREAS by an Act passed in the forty-eighth year of his late Majesty King *George* the Third, intituled *An Act for preventing Frauds and Depredations committed on Merchants, Ship-owners and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain Defects relative to the Adjustment of Salvage, under a Statute made in the Twelfth Year of her late Majesty Queen* Anne; which Act was to continue in force for seven years and from thence to the end of the next session of Parliament: And whereas by an Act passed in the fifty-third year of his late Majesty King *George* the Third, the said above recited Act, except so far as the same was altered, was further continued in force for seven years from the passing of the said Act, and from thence to the end of the next session of Parliament and no longer: And whereas it is expedient that the said recited Acts should be further continued except so far as the same are altered by this Act; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for the lord warden of the Cinque Ports for the time being to nominate and appoint by any instrument or instruments under his hand and seal three or more substantial persons in each of the Cinque Ports two ancient Towns and their members to adjust and determine any difference relative to salvage (which may arise) between the master of any vessel and the person or persons bringing such cables and anchors ashore; and in case any ship or vessel shall be either forced or cut from her cables and anchors by extremity of weather or by any other accident whatever, and leave the same in any roadstead or other place within the jurisdiction of the Cinque Ports two ancient Towns and their members and the salvage cannot be adjusted between the persons concerned, then the same shall be determined by any three or more of the said persons so to be appointed as aforesaid within the space of twenty-four hours after such difference shall be referred to them for their determination thereof, any usage or custom to the contrary in anywise notwithstanding: Provided always, that such commissioners shall immediately after their nomination proceed to elect some fit and proper person who shall be a notary or master extraordinary in Chancery as their secretary or register, except to the port of *Dover* where the register for the time being of the Court of Admiralty of the Cinque Ports shall be the register; and which secretary or register shall enter in a book to be kept for that purpose all the proceedings of such commissioners, and also a copy of the awards which they shall from time to time make; but such election of secretaries or registers shall be subject to the approbation of the lord warden for the time being.

1 & 2 Geo. IV. c. 76. 48 G. 3. c. 130.

Lord Warden to appoint Commissioners to determine Differences relative to Salvage.

Commissioners to appoint a Secretary or Register, subject to the Approbation of the Lord Warden. Proceedings to be entered.

II. And be it further enacted, That it shall be lawful for the said commissioners to be appointed as aforesaid to decide on all claims and demands whatever which shall or may be made by pilots hovellers boatmen and other persons for services of any sort or description rendered to any ship or vessel, as well for carrying off from the shore to such ship or vessel any anchors cables or other stores from any part or port of the coast of *Kent Sussex Essex* or the Isle of *Thanet* within the jurisdiction aforesaid, as for the conducting and conveying such ships and vessels from the *Downs* and other bays and roadsteads on the coast

Power to Commissioners to settle all Differences which may arise.

No. CVIII. 1 & 2 Geo. IV. c. 76.

of *Kent Sussex* and *Essex* and the Island of *Thanet* or from the sea or any other place to *Ramsgate Dover* or any other harbour port or place on the said coasts within the jurisdiction aforesaid, or for the saving and preserving within the jurisdiction aforesaid any goods or merchandize wrecked stranded or cast away from any ship or vessel the master or owners thereof or their agents being present at the place where the commissioners shall be sitting; and that the said commissioners shall have full power and authority to hear and determine on all cases whatever of services rendered by pilots boatmen and others to shipping within the jurisdiction aforesaid, whether such ships or vessels shall be in distress or not; and that it shall be lawful for the said commissioners whenever they see occasion to examine the parties or their witnesses upon their oath, which oaths shall and may be administered by the said secretary or register.

Commissioners to be paid by the Owners, &c. for their Trouble such Fees as shall be allowed by the Lord Warden.

III. And be it further enacted, That it shall be lawful for the commissioners so to be appointed and their secretary or register as aforesaid, who shall decide on any such claims or demands as aforesaid, to demand and receive of and from the owners of such ships or vessels or the proprietors of any such goods or merchandizes, against whom any pilot boatman or other person shall make any claim or demand for services of any sort rendered to such ships or vessels, or for the sole saving and preserving any goods or merchandizes wrecked stranded or cast away within the jurisdiction aforesaid; and such owners and proprietors are hereby required to pay to them such fee or reward for deciding on every such claim and demand as shall be adjudged to them in that behalf by the lord warden of the Cinque Ports for the time being: Provided always, that no person to be appointed a commissioner by virtue of this Act shall have power or authority to act in any other port or place than that in which he is resident or from which his usual place of residence is not distant more than one mile; and that before such commissioners shall in any case proceed to act, they shall severally take the following oath before a magistrate or a commissioner of the Court of King's Bench or Common Pleas or a master extraordinary in Chancery; (*videlicet.*)

No Commissioner shall act out of the Place where he is resident.

Commissioners to take the following Oath.

Form of Oath.

'I *A. B* do swear, That I have not, neither will I in any way, directly or indirectly, take or receive any fee, emolument, or reward, from any of the parties whose interests are referred to my decision (save and except such fee or reward as shall be allowed by the Lord Warden to be paid to me by the ship-owners or proprietors of the cargo or their agents); and that I will not accept or receive any fee whatever from the persons claiming reward or salvage; but that I will decide according to the best of my judgment, on the evidence to be brought before me, without favour or affection to either party. So help me GOD.'

Parties dissatisfied may appeal to the High Court of Admiralty, or the Admiralty of the Cinque Ports; but the Ship to be liberated, on giving Bail in Double the Amount of the Award.

Bail to be taken and certified according to Schedule annexed.

IV. And be it further enacted, That in case the party or parties so claiming to be entitled to salvage or compensation for services rendered as aforesaid, or the party or parties who are to pay the same or their agents shall be dissatisfied with such award and decision of the commissioners, it shall and may be lawful for either of them respectively within eight days after such award is made, but not afterwards, to declare to the commissioners his or their desire of obtaining the judgment of some competent Court of Admiralty respecting the said salvage or compensation as aforesaid, and thereupon such party or parties shall forthwith be required by the commissioners to declare whether he or they will proceed in the Court of Admiralty of the Cinque Ports or the High Court of Admiralty of *England*, and he or they shall so proceed within twenty days from the date of such award by taking out a monition against the adverse party; but in such case the said commissioners are hereby empowered and required to permit the said ship and her cargo notwithstanding such declaration and proceeding to depart on her voyage, or to deliver to the owners and proprietors or their agents any goods or merchandizes respecting which any claim for salvage shall be made upon the owners or proprietors of the same or their agents, giving good and sufficient bail in double the amount of the sum awarded, and which bail the said com-

missioners or any of them are and is hereby authorised to take and certify according to the form contained in the schedule hereunto annexed, and to transmit the same without delay to the Court of Admiralty, in which the intention of proceeding shall be so declared, together with a true certificate in writing of the gross value of the whole ship and cargo or other goods and merchandizes respecting which salvage shall be claimed, and also an official copy of such proceedings and awards, certified by the said secretary or register, and the same shall be admitted by such Court of Admiralty as evidence in the cause.

The Appeal to be conclusive.

V. Provided always and be it further enacted, That on an appeal so as aforesaid being made to the Court of Admiralty of the Cinque Ports or to the High Court of Admiralty, the same shall be taken and held to be final, and no ulterior appeal from sentence of the Court of Admiralty of the Cinque Ports or from the High Court of Admiralty shall lie to the King in Chancery.

Persons cutting away or defacing Buoy-ropes, &c. deemed guilty of Felony.

VI. And be it further enacted, That if any person or persons shall wilfully cut away cast adrift remove alter deface sink or destroy, or shall do or commit any act with intent and design to cut away cast adrift remove alter deface sink or destroy or in any other way injure or conceal any buoy buoy-rope or mark belonging to any ship or vessel, or which may be attached to any anchor or cable belonging to any ship or vessel whatever within the jurisdiction aforesaid, with intent thereby to defraud or injure any person or persons whatsoever or body corporate, such person or persons so offending shall on being convicted of such offence be deemed and adjudged guilty of felony, and shall be liable to be transported for any period not exceeding fourteen years.

Anchors, &c. found within the Jurisdiction, to be deposited in either of the Places herein mentioned, &c. or the Persons having them in Possession shall be adjudged guilty of receiving stolen Goods.

VII. And be it further enacted, That all anchors cables buoys ropes or other ships' stores or materials or any goods or merchandizes of any sort or description whatever, which may have been parted with cut from or left by any ship or vessel in the *Downs* or elsewhere within the jurisdiction aforesaid, whether the same shall be in distress or otherwise, and which shall have been weighed swept for or taken possession of by any pilots boatmen hovellers or other person or persons, shall be by them delivered either at *Ramsgate Deal* or *Dover Harwich Brightlingsea* or *Wivenhoe*, six public places of deposit declared by this Act for the reception of all such articles, or such other places as shall be declared by the lord warden, in the same state in which they are found, to the serjeant or serjeants of the Admiralty of the Cinque Ports aforesaid their deputy or deputies or such other person as he shall authorise to receive the same; but if any such articles so found weighed swept for or taken possession of shall not be so delivered immediately or duly reported to such serjeant or serjeants or their deputies on the finding thereof, and shall afterwards be discovered in the possession custody or power of such pilots boatmen hovellers or other person or persons, he she or they shall on conviction be adjudged and deemed guilty of receiving goods knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore.

All wrecked Merchandize and Ships' Stores to be also deposited in like manner.

VIII. And be it further enacted, That all merchandize materials of any sort or marine stores of every description, whether belonging to his Majesty or to any *British* subjects or foreigners, which may be preserved from any ship or vessel stranded deserted by her crew or wrecked, either on shore or on the *Goodwin* or any other sand or shoal or any part of the main land or any port or place within the jurisdiction aforesaid, shall be landed and delivered at one of the six places of deposit belonging to the lord warden's deputies at *Ramsgate* or *Deal* or *Dover Harwich Brightlingsea* or *Wivenhoe* or such other place as shall be declared and appointed by the said lord warden for that purpose, whichever shall be most convenient or contiguous to the place where the loss occurs; and that if any person or persons who shall have preserved or taken possession of any such merchandize or marine stores within the jurisdiction aforesaid, shall sell dispose of or otherwise make away with the same, or shall in any manner conceal deface take out or obliterate the marks or numbers thereon, or alter the same in any manner with intent thereby directly or indirectly to prevent the discovery and identity of such articles by the

If sold, or Marks defaced by the Salvors, they shall be adjudged guilty of Felony.

No. CVIII. 1 & 2 Geo. IV. c. 76.

owner or owners thereof, such person or persons shall be deemed and adjudged guilty of felony.

Officers of the Lord Warden may seize Anchors, Stores, &c. concealed within their Jurisdiction, &c.

IX. Provided always and it is hereby enacted and declared, That nothing herein contained shall extend or be construed to extend to the preventing or restraining the serjeant's deputies or any other officer of the lord warden from seizing all such anchors cables buoys buoy-ropes or other ships' stores or materials as aforesaid, and likewise all such merchandize and marine stores as aforesaid, which he or they shall find concealed or attempted to be concealed within the jurisdiction aforesaid, or which he or they shall find in the possession of any person or persons who shall be conveying or in the act of preparing to convey the same out of the said jurisdiction, or from any place where the same shall have been landed within the said jurisdiction, to any other place within the same other than to one of the said public places of deposit aforesaid; but it shall be lawful in all such cases for all and singular the officers aforesaid to seize the same as well on shore as at sea within the said jurisdiction, and to take and carry the same to one of the said public places of deposit, any thing in this or in any other Act law custom or usage to the contrary notwithstanding.

Receivers to be subject to the same Punishment as though the Goods had been stolen on Shore.

X. And be it further enacted, That if any person or persons within the jurisdiction aforesaid shall knowingly and with intent to defraud and injure the true owner or owners thereof, purchase or receive any anchors cables ropes or other ships' stores or materials of any description whatever, or any merchandize or lading which may have been taken up weighed swept for or taken possession of, whether the same shall have belonged to any ship or vessel in distress or otherwise or whether the same shall have been preserved from any wreck within the jurisdiction aforesaid, such person or persons shall on conviction thereof be deemed guilty of receiving stolen goods knowing the same to be stolen as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, and be also liable to be transported for seven years in the discretion of the court before which he she or they shall be tried.

Lord Warden's Officers authorised to seize Anchors, &c. taken up within the Limits of the Cinque Ports, though removed out of such Limits.

XI. And whereas it frequently happens that anchors cables and other marine stores or merchandize, which have been weighed swept for or taken possession of within the jurisdiction aforesaid, are for fraudulent purposes carried away to *Rochester London Portsmouth* and other places not within the jurisdiction aforesaid, and the officers of the lord warden cannot by reason of such removal recover the same; Be it enacted and declared, That from and after the passing of this Act it shall be lawful for the serjeant or serjeants of the Admiralty of the Cinque Ports deputies or any other officer of the lord warden, whenever the case shall happen, to seize such anchor cable or other marine stores or merchandize out of the jurisdiction aforesaid, and there to take and carry away the same to some one of the aforesaid public places of deposit, or to place the same in a place of security, till proceedings shall be instituted against the same either in the Court of Admiralty of the Cinque Ports or in the High Court of Admiralty.

Dealers in Ships' Stores to have their Names painted on their Storehouses.

Penalty.

XII. And be it further enacted, That all persons who shall trade or deal in buying and selling anchors cables sails old junk or paper stuff old iron or marine stores of any kind or description within the jurisdiction aforesaid, shall have their names with the words "Dealer in Marine Stores" painted distinctly in letters of not less than six inches in length upon the front of all their storehouses warehouses and other depôts for such goods; and in default of their so doing they shall on conviction before any person or persons duly authorised to act as a magistrate or magistrates within the limits aforesaid forfeit and pay any sum not exceeding twenty pounds nor less than ten pounds, one half of which penalties shall be paid to the informer and the other moiety to the poor of the parish where such offence shall be committed; and further, that it shall not be lawful for such dealers or traders to cut up any cables or part of the same, or to uncant untwine or unlay the same or cordage of any description into junk or paper stuff, nor any woulding wounding or worming or any cable matting on the same or on rigging on any pretence

No Cables, &c. to be cut up without a Permit from one of Lord Warden's Deputies.

whatsoever, without first obtaining a permit from the lord warden's deputies or one of them, which permit shall not be granted unless an affidavit shall have been first made before some one of the persons duly authorised to act as magistrates within the limits of the Cinque Ports two ancient Towns and their members, and shall have been delivered to and left with the person granting such permit, in which affidavit there shall be sworn that the cable and cordage so intended to be cut up, had been purchased fairly and without fraud by the party so intending to cut up the same, and without any knowledge or suspicion on his or her part that the same had been or were dishonestly come by; and in which affidavit shall also be specified the particular quality and description of such cable or cordage, and the name or names of the seller or sellers thereof, which affidavit shall be recited and set forth at length in the permit thereupon granted.

Dealers to keep an Account of the Marine Stores bought by them.

XIII. And for the further and more effectual prevention of fraud in this respect, Be it enacted, That all dealers in such marine stores as aforesaid within the limits of the Cinque Ports two ancient Towns and their members shall keep a book or books fairly written, in which entries shall be from time to time regularly made of all such marine stores as shall be by them from time to time bought, containing a true account and description of the times when the same were so respectively bought by them and of the names and places of abode of the respective sellers thereof; and also that before the party who shall have obtained such permit for the cutting up of any such cable or cordage (as herein-before required to be obtained) shall proceed to cut up the same by virtue thereof, there shall be published by the space of one week at least before the time of cutting up of the same one or more advertisements in some public newspaper printed within the counties of *Kent Sussex* and *Essex* and near to the usual residence or place of abode of such party, notifying that such party had obtained such permit for the purpose of cutting up such quantity of cable or cordage and of such kind and quality as therein described, a true copy of which permit shall be inserted in such advertisement; whereupon it shall be lawful for all and every person or persons who may have just cause to suspect, and shall have verified upon oath the fact of such his her or their suspicion before any of the persons duly authorized to act as magistrates within the limits aforesaid, by warrant of such magistrate to him or them for that purpose thereupon granted to require of and from any such dealer, who shall have so advertised and shall be so sworn to be suspected as aforesaid, the production and examination of the book or books of entries hereby required by him to be kept, and to inspect and examine the cable or cordage described in such permit; and in case any such dealer shall, when so thereunto required as aforesaid, neglect or refuse to produce to the person named in such warrant as the person on whose oath the same had been obtained, the book or books containing the entries of such dealer so required to be made therein as aforesaid, or shall neglect to keep any such book or books in which entries containing accounts of the several particulars herein-before required to be entered shall be made, or to permit such inspection and examination as aforesaid, or shall after obtaining such permit for the cutting up of any cable or cordage and before the cutting up of the same neglect to publish such one or more advertisements relative thereto as is herein-before directed and required to be published, the dealer or dealers so offending in all or any of the particulars herein-before mentioned shall forfeit and pay for every such offence, being his her or their first offence, any sum not exceeding twenty pounds nor less than ten pounds; and for every second and further offence any sum not exceeding fifty pounds nor less than thirty pounds; one half of which penalties shall on conviction before any of such magistrates duly authorized to act within the limits aforesaid be paid to the informer and the other half to the poor of the parish in which such offence shall be committed; and in case any of the penalties by this Act imposed shall not be paid with the charges incident to the conviction immediately upon such conviction the same shall and may be levied by the warrant of such magistrate as afore-

Notice to be advertised before cutting up Cable or Cordage.

Penalty for refusing to produce the Book of Entries, or neglecting to give Notice before cutting up Cable or Cordage.

Penalties how to be levied.

said by distress upon the goods and chattels of every such offender or offenders; and in case there shall be no sufficient distress, then every such offender or offenders shall and may be committed by such magistrate as aforesaid to the common gaol within the limits aforesaid, in the case of any first offence for the space of three months, and in case of any second or further offence for the space of six months, unless the said penalty and charges shall be sooner paid.

Inhabitants to be competent Witnesses.

XIV. And be it further enacted, That the inhabitants of any parish township or place within the jurisdiction aforesaid shall be deemed and taken to be competent witnesses for the purpose of proving the commission of any offence against this Act within the limits of such parish township or place, notwithstanding the penalty incurred by such offence or any part thereof is or may be given or applicable to the poor of such parish township or place or otherwise for the benefit or use or in aid or exoneration of such parish township or place.

The Lord Warden and his Deputies, Judge, &c. to have the like Power as Justices of the Peace or Commissioners under this Act.

XV. And be it further enacted, That the lord warden of the Cinque Ports for the time being and the lieutenant of *Dover* Castle for the time being and the deputy wardens of the Cinque Ports for the time being and the judge official and commissary of the Court of Admiralty of the Cinque Ports two ancient Towns and the members thereof for the time being, and any other officer who shall be specially appointed by the lord warden and all and every of them, shall and may execute perform and do within the jurisdiction aforesaid all the acts matters and things contained in this Act in like manner to all intents and purposes as any magistrate or magistrates or any commissioner or commissioners to be appointed by virtue of this Act is and are authorized to execute perform and do the same.

Manner of issuing Commissions for the Punishment of Offences, agreeably to 28 H. 8. c. 15.

XVI. And whereas by a certain Act passed in the twenty-eighth year of the reign of King *Henry* the Eighth, intituled *For Pirates*, it is among other things enacted to the effect following, that whenever any commission for the punishment of certain offences therein named shall be directed or sent to any place within the jurisdiction of the Five Ports, that then every such commission shall be directed unto the lord warden of the said port for the time being or to his deputy, or unto three or four such persons as the lord chancellor for the time being shall name and appoint: And whereas by the said Act it is further enacted to the effect following, that every inquisition and trial to be had by virtue of such commission shall be made and had by the inhabitants of the said Five Ports, or the members of the same: And whereas of a long time past no such commission has been sent to any place within the jurisdiction of the Cinque Ports: Be it enacted, for the more certain and speedy administration of justice, That as often as his Majesty shall direct a commission according to the provisions of the aforesaid Act to the admiral or admirals or his or their lieutenant deputy and deputies, it shall and may be lawful for his Majesty on the application of the lord warden of the Cinque Ports to direct such commission jointly to the admiral or admirals, or his or their lieutenant deputy and deputies and also to the lord warden of the Cinque Ports for the time being and to his deputy; and the commissioners who shall sit by virtue of such commission so jointly addressed to whatever shire or place in the realm the same shall be limited shall have full power and authority to inquire into try and determine all offences named in the said Act or in any other Act relating to proceedings under such commission, by the oaths of twelve good and lawful inhabitants in the shire limited in the said commission, whether the said offences shall have been committed within the jurisdictions of the lord admiral of *England*, or of the lord warden of the Cinque Ports; and all and every trial conviction judgment and proceeding whatsoever under such commission shall be as good and effectual to all intents and purposes in law, and shall be followed by the same consequences to the offender or offenders as if the same were had by virtue of any separate commission to be issued under the provisions of the aforesaid Act of King *Henry* the Eighth: Provided always, and it is hereby further declared, that this Act

Reservation of the Rights of the Admiralty Court, and of the Admiralty of the Cinque Ports.

or any thing herein contained shall not extend or be construed to extend to the taking away abridging prejudicing or impeaching in any manner whatever the jurisdiction of the High Court of Admiralty of *England* or the jurisdiction of the Admiralty Court of the Cinque Ports two ancient Towns and their members; but that it shall and may be lawful for the said courts respectively and the judge or judges thereof for the time being, to have use exercise and enjoy jurisdiction over all such matters rights and offences as they have heretofore had used exercised and enjoyed as fully and effectually to all intents and purposes whatever as if this Act had not been made; any thing herein-before contained to the contrary in anywise notwithstanding.

Reservation of the Rights of the Trinity House.

XVII. Provided also, and it is hereby further enacted and declared, That this Act or any thing herein contained shall not extend or be construed to extend to the taking away abridging hindering prejudicing or impeaching of any grant liberties franchises and privileges heretofore granted to and vested in the corporation of the Trinity House of *Deptford Strond*; but that the said corporation shall hold and enjoy the same as fully and effectually to all intents and purposes as they might have done in case this Act had never been made, any thing herein-before contained to the contrary thereof in any wise notwithstanding.

Boundaries of the Jurisdiction of the Lord Warden of the Cinque Ports.

XVIII. And whereas doubts have arisen as to the exact boundaries of the jurisdiction of the lord high admiral and the lord warden of the Cinque Ports, and it is highly expedient for the purposes of this Act that the same should be clearly set forth; Now it is hereby declared and enacted, That the boundaries of the jurisdiction of the lord warden of the Cinque Ports in regard to any matter or thing contained in this Act shall be and shall be deemed and taken to be as follows; (that is to say) from a point to the westward of *Seaford* in the county of *Sussex* called *Red Cliff* including the same; thence passing in a line one mile without the sand or shoal called *The Horse of Willingdon*, and continuing the same distance without the ridge and new shoals; and thence in a line within five miles of *Cape Grisnez* on the coast of *France*; thence round the shoal called *The Overfalls*, two miles distant from the same; thence in a line without and the same distance along the eastern side of the *Galloper Sand* until the north end thereof bears west-north-west true bearing from the west-north-west bearing of the *Galloper*, it runs in a direct line across the shoal called *The Thwart Middle*, till it reaches the shore underneath the *Maze Tower*; from thence following in a line of the shore up to *Saint Orsyth* in the county of *Essex*, and following the course of the shore up to the river *Coln* to the landing-place nearest *Brightlingsea*; from thence in a direct line to *Shoe Bacon*; from thence to the point of *Shellness* on the Isle of *Sheppey*; and from thence across the waters to *Feversham*; and from thence following the line of coast round the *North* and *South Forelands* and *Beachy Head* till it reaches the said *Red Cliff* including all the waters creeks and havens comprehended between them: Provided always, and it is hereby declared, that nothing in this Act contained shall extend or be construed to extend to enlarge or abridge the local limits of the ancient jurisdiction rights and privileges of the lord high admiral of *England*, or the lord warden or admiral of the Cinque Ports respectively or their respective representatives; but that the same shall remain according to ancient usage, and that the description herein-before contained shall only be deemed applicable to the purposes of this Act; any thing herein contained to the contrary notwithstanding.

For the better Adjustment and Payment of Salvage under 12 Ann, c. 18.

XIX. And whereas it is expedient that the like means of conclusively adjusting and recovering the quantum of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship vessel or goods should subsist and be by law applicable in cases where the salvors shall have acted under and by the mere employment and authority of the commander or other superior officer mariners or owners of any ship or vessel in distress as are now by law provided for adjusting the quantum of such monies or gratuities which shall have become due in cases where application shall have been first made to

No. CVIII. 1 & 2 Geo. IV. c. 76.

officers of the customs, or other the officer or officers in that behalf named and appointed in and by a certain statute made in the twelfth year of the reign of our late Sovereign Lady Queen *Anne*, intituled *An Act for preserving of all such Ships and Goods thereof which shall happen to be forced on shore or stranded upon the Coasts of this Kingdom, or any other of her Majesty's Dominions*, and where assistance shall have been thereupon rendered in pursuance of the provisions of that statute; Be it therefore enacted and declared, That all and every the means which in virtue of the statute last mentioned subsist and may now be by law applied for the conclusively adjusting and for the recovering of the quantum of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship vessel or goods in cases where application shall have been first made pursuant to that statute to officers of the customs, or other the officer or officers therein in that behalf mentioned, and assistance shall have been thereupon rendered and had in pursuance of the provisions of that statute shall be by law applicable and available in like manner to all intents and purposes in cases where the salvors shall have acted under and by the mere employment and authority of the commander or other superior officers mariners or owners of any ship or vessel in distress, although no such application shall have been made to nor any authority or assistance derived from any officers of the customs, or other the officer or officers in the said statute in that behalf mentioned; and that upon payment or tender and refusal of the quantum of monies or gratuities to be paid to the several persons who shall have acted or been employed in such salvage, or in case such payment or tender cannot be made, on security being given for the due payment thereof to the satisfaction of the commissioners who shall have adjusted such quantum of gratuities, it shall not be lawful for any officer of the customs or other person or persons having the possession or custody of such ship vessel or goods any longer to retain the possession or custody of the same or any part thereof, by reason or pretence of any claim or right to a compensation or gratuity for such salvage as aforesaid, or for having acted or been employed therein.

Owners or Salvors may sell so much of the Property saved as will defray Salvage.

XX. And be it further enacted and declared, That in all cases it shall be lawful for the owner or owners, or if the owner or owners refuse, for the salvors to sell so much of the property saved as will be sufficient to defray the salvage adjudged and all expences attending the same, and such other reasonable charges and expences respecting the said property as shall be allowed by the High Court of Admiralty or by the Court of Admiralty of the Cinque Ports or by the commissioners appointed under this Act; and that on the production of an order or decree from the High Court of Admiralty or from the Court of Admiralty of the Cinque Ports or of an award made by the commissioners appointed under this Act, the commissioners of customs and excise shall be empowered and required and they are hereby empowered and required to allow the sale of such goods as aforesaid free from the payment of all duties: Provided nevertheless that in all cases in which they may think it adviseable it shall be lawful for the commissioners of the customs and excise to refer any such award which may be produced to them from the commissioners appointed under this Act to the judgment or revision of the High Court of Admiralty.

Jurisdiction of Cinque Ports not to be affected.

XXI. Provided always, That nothing herein in this behalf contained shall extend or be construed to extend to affect or impeach the jurisdiction to be exercised within the Cinque Ports or to affect or abridge in any degree the jurisdiction or authority of the High Court of Admiralty.

Public Act.

XXII. And be it further enacted, That this Act shall be a public Act, and shall be judicially taken notice of as such by all judges justices and others without being specially pleaded.

The SCHEDULE to which this Act refers.

ON the day of , in the year of our Lord , before, &c. at in the county of

[*Ships' names.*]

A. B. [*here insert the name of the salvors*] against the said ship whereof was master, her tackle apparel and furniture, and the goods, wares and merchandizes on board the same; and also against the said master, and the owners of the said ship and cargo [*or, as the case may be*, against certain goods and merchandizes lately laden on board the said ship, whereof was master; and also against the said master, and the owners (*or if the owners alone appear by themselves or agents, then leave out the master's name*) of the said goods and merchandizes], in a cause of salvage.

[*Masters' names.*]

On which day appeared personally *W. X.* of and *Y. Z.* of who produced themselves as sureties for the said the master, and for the owners of the said ship and cargo [*or, as as the case may be*] for the said master and owners of the said goods and merchandizes, and submitting themselves to the jurisdiction of the High Court of Admiralty of *England*, [*or*, the Court of Admiralty for the Cinque Ports, *as the case may be*] bound themselves, their heirs, executors and administrators, for the said master and owners of the said ship and cargo, [*or, as the case may be*] for the said master and owners, *or*, for the owners of the said goods and merchandizes, in the sum of pounds of lawful money of *Great Britain*, unto the said *A. B.* &c. to answer the salvage and expences of the said ship and cargo, [*or, as the case may be*] on the said goods and merchandize, as shall hereafter be decreed by the said court, according to the tenor of the Act in that behalf made and provided; and unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors and administrators goods and chattels, wheresoever the same shall be found, to the value of the sum above-mentioned.

This bail was duly taken, acknowledged, and received at the time and place above-written before me the undersigned commissioner; and I do hereby further certify, that I do believe and consider the persons above mentioned sufficient security for the sum of pounds.

W. X.

Y. Z.

[No. CIX.] 1 & 2 Geo. IV. c. 99.—An Act for the Appropriation of certain Proceeds arising from the Capture of Vessels and Cargoes, the Property of the Subjects of the Kings of *Spain*, *Portugal*, and the *Netherlands*, taken and seized in violation of the Conventions made with those States, and for granting Bounties upon Slaves captured in such Vessels, and also for granting Indemnity to the Captors of certain Vessels taken in the Prosecution of the Slave Trade.—[10*th July* 1821.]

XI. AND every ship or vessel which shall have been or may be captured by any ship or vessel belonging to his Majesty for being engaged in any illicit traffic in slaves, and which shall have been before this Act or which may hereafter be condemned as forfeited, shall be entitled to and have a certificate of registry as a *British* ship, and shall thereupon be deemed to be a *British* registered ship, and thereupon have all the privileges and advantages of *British*-built ships, and subject to the same provisions as ships condemned in any Court of Admiralty or Vice-Admiralty in any part of his Majesty's dominions for any offence in relation to the slave trade. 1 & 2 Geo. IV. c. 99. § 11.

No. CX. 3 Geo. IV. c. 42.

[No. CX.] 3 Geo. IV. c. 42.—An Act to repeal certain Acts and Parts of Acts relating to the Importation of Goods and Merchandize.—[24*th June* 1822.]

3 Geo. IV. c. 42.

English Navigation Act, 12 C. 2. c. 18.

Irish Navigation Act, 27 G. 3. c. 23.

amended by Acts which it is expedient to repeal, &c.

WHEREAS an Act was passed in the Parliament of *England* in the twelfth year of the reign of his Majesty King *Charles* the Second, for the encouraging and increasing of shipping and navigation: And whereas by an Act passed in the Parliament of *Ireland* in the twenty-seventh year of the reign of his late Majesty King *George* the Third, intituled *An Act for the further Increase and Encouragement of Shipping and Navigation*, it was enacted, that the said recited Act passed in *England* in the twelfth year of the reign of King *Charles* the Second and every provision therein contained, (so far as the same are not altered or repealed by the said Act of the Parliament of *Ireland*) should be of full force and effect within *Ireland*: And whereas divers Acts have been from time to time passed for the further regulation of shipping navigation and commerce; and it is expedient that certain of the provisions contained in the said several Acts relating to the countries from whence and the ships in which goods and merchandize shall be imported into any part of the united kingdom of *Great Britain* and *Ireland* should be repealed, in order that other regulations relating to such importation may be declared consolidated and comprised in one Act passed for that purpose: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act so much of the said recited Act passed in the twelfth year of the reign of his Majesty King *Charles* the Second, intituled *An Act for the encouraging and increasing of Shipping and Navigation*, shall be repealed, whereby it is enacted, that no goods or commodities whatsoever of the growth production or manufacture of *Asia Africa* or *America* be imported into *England Ireland* or *Wales* the islands of *Guernsey* or *Jersey* or town of *Berwick-upon-Tweed*, in any other ship or ships vessel or vessels whatsoever but in such as do truly and without fraud belong only to the people of *England* or *Ireland* dominion of *Wales* or town of *Berwick-upon-Tweed*, or of the lands islands plantations or territories in *Asia Africa* or *America* to his Majesty belonging, and whereof the master and three-fourths of the mariners at least are *English*, under the penalty in the said Act mentioned; and so much and such parts of the said recited Act is and are hereby repealed accordingly.

Repeal of 12 C. 2. c. 18. § 3. as to Importation of Goods of Asia, Africa, or America, in British Ships only.

II. And be it further enacted, That from and after the passing of this Act so much of the said recited Act of the twelfth year of the reign of King *Charles* the Second for the encouraging and increasing of shipping and navigation shall be repealed, whereby it is enacted, that no goods or commodities that are of foreign growth production or manufacture, and which are to be brought into *England Ireland Wales* the islands of *Guernsey* and *Jersey* or town of *Berwick-upon-Tweed*, in *English*-built shipping or other shipping belonging to some of the aforesaid places and navigated by *English* mariners, shall be shipped or brought from any other place or places country or countries but only from those of the said growth production or manufacture, or from those ports where the said goods and commodities can only be or are or usually have been first shipped for transportation and from none other places or countries, under the penalty in the said Act mentioned; and so much and such part of the said recited Act is hereby repealed accordingly.

Repeal of § 4. of the same Act, as to the Importation of Goods of Asia, &c. directly from the Place of their Growth.

III. And be it further enacted, That from and after the passing of this Act so much of the said recited Act of the twelfth year of the reign of King *Charles* the Second for the encouraging and increasing of shipping and navigation shall be repealed, whereby it is enacted, that no goods or commodities of the growth production or manufacture of *Mus-*

Repeal of § 8. of the same Act, as to the Importation of Goods of Russia, and certain enumerated European Goods, and Turkish Goods, in British Ships, or Ships of the Country of their Growth.

covy or of any of the countries dominions or territories to the Great Duke or Emperor of *Muscovy* or *Russia* belonging, as also that no sort of masts timber or boards, no foreign salt pitch tar rosin hemp or flax raisins figs prunes olive oil, no sorts of corn or grains sugar pot-ashes wines vinegar or spirits called *aqua vitæ* or brandy wine, shall be imported into *England Ireland Wales* or town of *Berwick-upon-Tweed* in any ship or ships vessel or vessels whatsoever, but in such as do truly and without fraud belong to the people thereof or some of them as the true owners or proprietors thereof, and whereof the master and three-fourths of the mariners at least are *English;* and that no currants nor commodities of the growth production or manufacture of any of the countries islands dominions or territories to the *Ottoman* or *Turkish* empire belonging, shall be imported into any of the aforementioned places in any ship or vessel but which is of *English*-built and navigated as aforesaid and no other, except only such foreign ships and vessels as are of the built of that country or place of which the said goods are the growth production or manufacture respectively, or of such port where the said goods can only be or most usually are first shipped for transportation, and whereof the master and three-fourths of the mariners at least are of the said country or place, under the penalty in the said Act mentioned; and so much and such part of the said recited Act is hereby repealed accordingly.

Repeal of § 12 & 14 of the same Act, as relates to Goods of the Streights, Spain, and Portugal.

IV. And be it further enacted, That from and after the passing of this Act so much and such parts of the said recited Act of the twelfth year of the reign of King *Charles* the Second for the encouraging and increasing of shipping and navigation shall be repealed, as relate to the importation of any of the commodities of the *Streights* or *Levant Seas*, or to the importation of all sorts of goods or commodities of the growth production or manufacture of the plantations or dominions of *Spain* or *Portugal* respectively from any of the ports of *Spain* or *Portugal* or *Western Islands* commonly called *Azores* or *Madeira* or *Canary Islands;* and so much and such parts of the said Act is and are hereby repealed accordingly.

Irish Act, 27 G. 3. c. 23. extending the English Act, 12 C. 2. c. 18. to Ireland, repealed, so far as relates to Matters repealed by this Act.

V. And be it further enacted, That from and after the passing of this Act so much of the herein-before recited Act passed in the Parliament of *Ireland* in the twenty-seventh year of the reign of his late Majesty King *George* the Third, intituled *An Act for the further Increase and Encouragement of Shipping and Navigation*, whereby it is enacted, that the said Act passed in the Parliament of *England* in the twelfth year of the reign of King *Charles* the Second, for the encouraging and increasing of shipping and navigation, shall be of full force and effect in *Ireland*, shall be repealed, so far as relates to so much and such parts of the said Act of the twelfth year of the reign of King *Charles* the Second as is and are herein before recited and repealed; and that so much and such parts of the said recited Act of the twelfth year of the reign of King *Charles* the Second as is or are repealed by this Act shall cease to be in force in *Ireland* after the passing of this Act; any thing in the said recited Act of the Parliament of *Ireland* of the twenty-seventh year of his late Majesty's reign to the contrary in anywise notwithstanding.

Repeal of § 23. of 13 & 14 C. 2. c. 11. prohibiting the Importation of certain Articles from the Netherlands or Germany.

VI. And be it further enacted, That from and after the passing of this Act so much of an Act passed in the thirteenth and fourteenth years of the reign of King *Charles* the Second, intituled *An Act for preventing Frauds and regulating Abuses in his Majesty's Customs* shall be repealed, whereby it is enacted and declared, that no sort of wines (other than *Rhenish*) no sort of spicery grocery tobacco pot-ashes pitch tar salt rosin deal boards fir timber or olive oil shall be imported from the *Netherlands* or *Germany* upon any pretence whatsoever, in any sort of ships or vessels whatsoever, upon penalty of the loss of all the said goods, as also of the ships and furniture; and so much of the said recited Act is hereby repealed accordingly.

Repeal of so much of 13 & 14 C. 2. c. 11.

VII. And be it further enacted, That from and after the passing of this Act so much of the said recited Act of the thirteenth and fourteenth years of the reign of King *Charles* the Second shall be repealed, whereby

No. CX. 3 Geo. IV. c. 42.

it is enacted, that no foreign-built ship shall enjoy the privilege of a ship belonging to *England* or *Ireland*, although owned or manned by *English* (except such ships only as shall be taken at sea by letters of mart or reprisal and condemnation made in the Court of Admiralty as lawful prize), but that all such ships shall be deemed as alien ships; and so much of the said recited Act is hereby repealed accordingly.

Repeal of 1 Anne, st. 1. c. 12. § 112. as to Importation of Hungary Wines.

VIII. And be it further enacted, That from and after the passing of this Act so much of an Act passed in the first year of the reign of Queen *Anne*, intituled *An Act for granting an Aid to her Majesty by divers Subsidies and a Land Tax* shall be repealed, whereby it is enacted, that it shall and may be lawful to import from *Hamburgh* wines of the growth of *Hungary*, and the same is hereby repealed accordingly.

Repeal of 6 Anne, c. 33. as to Cochineal, although made perpetual by 12 Anne, st. 1. c. 18. § 3.

IX. And be it further enacted, That from and after the passing of this Act an Act passed in the sixth year of the reign of Queen *Anne*, intituled *An Act for the Importation of Cochineal from any Port in* Spain *during the present War and Six Months longer;* and which, by an Act passed in the twelfth year of the reign of the said Queen *Anne* was made perpetual, shall be and the same is hereby repealed; any thing in the said recited Act of the said twelfth year to the contrary notwithstanding.

Repeal of 6 G. 1. c. 14. as to Importation of Raw Silk and Mohair Yarn.

X. And be it further enacted, That from and after the passing of this Act an Act made in the sixth year of the reign of King *George* the First, intituled *An Act for prohibiting the Importation of Raw Silk and Mohair Yarn of the Product or Manufacture of* Asia, *from any Ports or Places in the* Streights *or* Levant Seas, *except such Ports and Places as are within the Dominions of the Grand Signior*, shall be and the same is hereby repealed.

Repeal of 6 G. 1. c. 15. as to Deals and Fir Timber.

XI. And be it further enacted, That from and after the passing of this Act an Act passed in the sixth year of the reign of King *George* the First, intituled *An Act to repeal so much of the Act, intituled 'An Act for 'preventing Frauds and regulating Abuses in his Majesty's Customs,' passed in the Thirteenth and Fourteenth Years of King* Charles *the Second, as relates to the prohibiting the Importation of Deal Boards and Fir Timber from* Germany, shall be and the same is hereby repealed.

Repeal of 13 G. 1. c. 25. and 7 G. 2. c. 18. for free Importation of Cochineal, although revived and continued by 1 & 2 G. 4. c. 14.

XII. And be it further enacted, That from and after the passing of this Act an Act passed in the thirteenth year of the reign of King *George* the First, intituled *An Act for the free Importation of Cochineal during the Time therein limited*; and also an Act passed in the seventh year of the reign of King *George* the Second for the revival of the said last-mentioned Act of the thirteenth year of the reign of King *George* the First, and also for the free importation of indigo; and which said last-recited Act was by an Act passed in the last Session of Parliament revived and continued until the twenty-fifth day of *March* one thousand eight hundred and twenty-four, shall be repealed; and the said recited Acts of the thirteenth year of King *George* the First and of the seventh year of the reign of King *George* the Second are hereby repealed accordingly, and shall cease and determine; any thing in the said recited Act passed in the last session of Parliament to the contrary in anywise notwithstanding.

Repeal of 6 G. 2. c. 7. for the free Importation of Jewels.

XIII. And be it further enacted, That from and after the passing of this Act an Act passed in the sixth year of the reign of King *George* the Second, intituled *An Act for the free Importation and Exportation of Diamonds, Pearls, Rubies, Emeralds and all other Jewels and precious Stones*, shall be and the same is hereby repealed.

Repeal of 14 G. 2. c. 36. 23 G. 2. c. 34. regulating Importation of Persian Goods through Russia.

XIV. And be it further enacted, That from and after the passing of this Act an Act passed in the fourteenth year of the reign of King *George* the Second, intituled *An Act for opening a Trade to and from* Persia *through* Russia; and also an Act made in the twenty-third year of the said King *George* the Second, intituled *An Act for permitting Raw Silk of the Growth or Produce of* Persia *purchased in* Russia *to be imported into this Kingdom from any Port or Place belonging to the Empire of* Russia, shall be and the said several Acts are hereby repealed.

Repeal of 25 G. 2. c. 32. § 1. as to Importation of Gum Senega.

XV. And be it further enacted, That from and after the passing of this Act so much and such part of an Act passed in the twenty-fifth year

of the reign of King *George* the Second, for the purpose among other things of allowing the importation of gum senega from any part of *Europe*, shall be repealed, whereby it is enacted that it shall be lawful for any of his Majesty's subjects to import gum senega in *British*-built ships navigated according to law from any port or place in *Europe;* and so much and such part of the said Act is hereby repealed accordingly.

Repeal of 6 G. 3. c. 52. § 20. as to Importation of Cotton Wool, from any Place, in British Ships.

XVI. And be it further enacted, That from and after the passing of this Act so much and such part of an Act passed in the sixth year of the reign of his late Majesty King *George* the Third, intituled *An Act for repealing certain Duties in the* British *Colonies and Plantations granted by several Acts of Parliament, and also the Duties imposed by an Act made in the last Session of Parliament upon certain* East India *Goods exported from* Great Britain, *and for granting other Duties instead thereof; and for further encouraging, regulating and securing several Branches of the Trade of this Kingdom and the* British *Dominions in* America shall be repealed, whereby it is enacted that it shall and may be lawful to and for any person or persons to import and bring into *Great Britain* in *British*-built ships or vessels navigated according to law from any port or place whatsoever any sort of cotton wool; and so much and such part of the said recited Act is hereby repealed accordingly.

Repeal of 7 G. 3. c. 43. § 2. as to importing Cambricks in British Ships only.

XVII. And be it further enacted, That from and after the passing of this Act so much and such parts of an Act passed in the seventh year of the reign of his late Majesty King *George* the Third, for amending and enforcing certain Acts for the more effectual preventing the fraudulent importation and wearing of cambricks and *French* lawns shall be repealed, whereby it is enacted that no cambrick or *French* lawn shall be allowed to be imported into the Port of *London* from any parts beyond the seas except in *British* ships navigated according to law; and so much and such parts of the said recited Act is and are hereby repealed accordingly.

Repeal of 15 G. 3. c. 35. though made perpetual by 31 G. 3. c. 43. as to Importation of Raw Goat-skins.

XVIII. And be it further enacted, That from and after the passing of this Act an Act passed in the fifteenth year of the reign of his late Majesty King *George* the Third, intituled *An Act to permit the free Importation of Raw Goat Skins into this Kingdom for a limited Time*, and which by an Act passed in the thirty-first year of the reign of his late Majesty King *George* the Third was made perpetual, shall be and the same is hereby repealed; any thing in the said recited Act of the said thirty-first year of his late Majesty's reign to the contrary in any wise notwithstanding.

Repeal of § 1. of 19 G. 3. c. 48. as to Importation of manufactured Goods of Asia, &c.

XIX. And be it further enacted, That from and after the passing of this Act so much of an Act made in the nineteenth year of the reign of his late Majesty King *George* the Third among other things for explaining so much of the said herein-before recited Act of the twelfth year of the reign of King *Charles* the Second, for the encouraging and increasing of shipping and navigation as relates to the importation of goods and commodities of the growth or production of *Africa Asia* or *America* manufactured in foreign parts, shall be repealed; whereby it is enacted that the said Act of the twelfth year of the reign of King *Charles* the Second shall not extend or be construed to extend to permit any goods or commodities whatever of the growth or production of *Africa Asia* or *America* which shall be in any degree manufactured in foreign parts to be imported into *Great Britain*, except and unless the same shall be so manufactured in the country or place of which the goods and commodities are the growth and production or in the place where such goods and commodities can only be or are first shipped for transportation; and so much and such part of the said Act of the nineteenth year of his said late Majesty King *George* the Third is hereby repealed accordingly.

Repeal of § 2. of 19 G. 3. c. 48. permitting Importation of Oil of Cinnamon, &c.

XX. And be it further enacted, That from and after the passing of this Act so much of the said last recited Act of the nineteenth year of his said late Majesty's reign shall be repealed, whereby or by construction whereof the importation of oil of cloves oil of cinnamon oil of mace and oil of nutmegs into *Great Britain* is permitted; and so much of the said Act is hereby repealed accordingly.

Repeal of 22 G. 3. c. 78. as to Import of Drugs, Wines, Timbers, &c.

XXI. And be it further enacted, That from and after the passing of

No. CX. 3 Geo. IV. c. 42.

this Act an Act passed in the twenty-second year of the reign of his late Majesty King *George* the Third, intituled *An Act to permit Drugs the Product of* Hungary *or* Germany *to be imported from the* Austrian Netherlands *or any part of* Germany *upon Payment of the Single Duty; to allow the Importation of* Hungary *or* German *Wines and organzined Thrown Silk from the* Austrian Netherlands *or any part of* Germany *into* Great Britain; *and of Timber and other Goods from any part of* Europe *in Ships the Property of Subjects under the same Sovereign as the Country of which the Goods are the Growth Produce or Manufacture*, shall be and the same is hereby repealed, except only so far as relates to organzined thrown silk.

except as to Thrown Silk.

Repeal of § 10. of 27 G. 3. c. 19. as to Importation of enumerated European Goods in British Ships or Ships of the Country.

XXII. And be it further enacted, That from and after the passing of this Act so much of an Act passed in the twenty-seventh year of the reign of his said late Majesty King *George* the Third, intituled *An Act to enforce and render more effectual several Acts passed in the Twelfth Year of the Reign of King* Charles *the Second, and other Acts made for the Increase and Encouragement of Shipping and Navigation*, shall be repealed; whereby it is enacted that any of the goods or commodities enumerated or described in the said Act of the twelfth year of the reign of King *Charles* the Second for encouraging and increasing of shipping and navigation being the growth production or manufacture of *Europe* may be imported under the conditions rules regulations and restrictions contained in the said Act of the twelfth year of the reign of King *Charles* the Second, and also in certain other Acts recited in the said Act of the twenty-seventh year of the reign of his said late Majesty King *George* the Third, either in ships and vessels which before the first day of *May* one thousand seven hundred and eighty-six did truly and without fraud wholly belong to his Majesty's dominions or which are of the built of his Majesty's dominions and registered respectively according to law, or in ships or vessels the built of any countries or places in *Europe* belonging to or under the dominion of the Sovereign or State in *Europe* of which the said goods or commodities so enumerated or described as aforesaid are the growth production or manufacture respectively, or of such ports where the said commodities can only be or are most usually first shipped for transportation, such ships or vessels being navigated with a master and three-fourths of the mariners at the least belonging to such countries or places or ports respectively, and in none other ships or vessels whatever; and so much and such parts of the said recited Act of the said twenty-seventh year of his said late Majesty's reign is and are hereby repealed accordingly.

Repeal of § 11. of 27 G. 3. c. 19. as to Importation from Gibraltar of Goods imported there from Morocco.

XXIII. And be it further enacted, That from and after the passing of this Act so much of the said last recited Act of the twenty-seventh year of his said late Majesty's reign shall be repealed, whereby it is enacted that it shall and may be lawful for any person or persons whatever to import or bring from *Gibraltar* in any ship or vessel which before the first day of *May* one thousand seven hundred and eighty-six did truly and without fraud wholly belong to his Majesty's dominions or are of the built of his Majesty's dominions, navigated and registered according to law, any goods wares or merchandize being of the growth or production of the dominions of the Emperor of *Morocco*, and which shall have been imported into *Gibraltar* directly from any part of the said dominions not lying or being to the southward of the port of *Mogadore* in ships or vessels belonging to or of the built of his Majesty's dominions as before described, navigated and registered according to law, or in ships or vessels belonging to the subjects of the said Emperor of *Morocco*; and so much and such part of the said recited Act of the twenty-seventh year of his said late Majesty's reign is hereby repealed accordingly.

Repeal of § 4. of 30 G. 3. c. 40. as to Importation of Manufactured Tobacco.

XXIV. And be it further enacted, That from and after the passing of this Act so much of an Act passed in the thirtieth year of the reign of his said late Majesty King *George* the Third, intituled *An Act to explain and amend an Act made in the last Session of Parliament, intituled 'An 'Act for repealing the Duties on Tobacco and Snuff, and for granting new 'Duties in lieu thereof,'* shall be repealed, whereby it is enacted that no tobacco (except tobacco of the growth production or manufacture of the plantations of *Spain* and *Portugal* and also except snuff) shall be imported

or brought from foreign parts either wholly or in part manufactured or in any state or degree of manufacture on pain of the forfeitures in the said Act mentioned; and so much and such part of the said Act is hereby repealed accordingly.

Repeal of so much of 35 G. 3. c. 117. as provides that Rape Seed shall be imported in British-built Ships.

XXV. And be it further enacted, That from and after the passing of this Act so much of an Act passed in the thirty-fifth year of the reign of his said late Majesty King *George* the Third, intituled *An Act for allowing the Importation of Rape Seed, or other Seeds used for extracting Oil, from any Country whatsoever, whenever the Price of* British *Middling Rape Seed shall be above a certain Limit*, shall be repealed, whereby it is enacted or provided that rape seed and all other seeds commonly made use of for the purpose of extracting oil therefrom shall be imported in a *British*-built ship owned and navigated according to law: Provided always that nothing herein contained shall extend to allow the importation of any rape seed or other such seed in any ship whatsoever whenever the prices of middling *British* rape seed shall be below the price of twenty pounds *per* last.

Repeal of so much of § 2. of 36 G. 3. c. 113. as provides that Linseed Cakes shall be imported in British Ships.

XXVI. And be it further enacted, That from and after the passing of this Act so much and such part of an Act passed in the thirty-sixth year of the reign of his late Majesty King *George* the Third, intituled *An Act for allowing the Importation of Arrow Root from the* British *Plantations, and also of Linseed Cakes and Rape Cakes from any Foreign Country in* British-*built Ships, owned navigated and registered according to Law, without Payment of Duty*, shall be repealed, whereby it is enacted or provided that linseed cake or rape cakes shall be imported from any foreign country whatever in any *British* ship or vessel owned navigated and registered according to law; and so much and such part of the said Act is hereby repealed accordingly.

Repeal of 5 G. 3. c. 30. § 1. 2. as to Licences for importing East India Goods for Export to Africa.

XXVII. And be it further enacted, That from and after the passing of this Act so much of an Act passed in the fifth year of the reign of his late Majesty King *George* the Third, made among other things for more effectually supplying the export trade of this Kingdom to *Africa* with such coarse printed calicoes and other goods of the product or manufacture of the *East Indies* or other places beyond the *Cape of Good Hope* as are prohibited to be worn and used in *Great Britain*, under or by virtue of which the commissioners of his Majesty's Treasury are authorised to allow by licence certain goods in the said recited Act mentioned to be imported into *Great Britain* for the purpose of exportation to *Africa* under the conditions and regulations therein stated shall be and the same is hereby repealed.

Repeal as to Licences for Importation of Spices under 8 Anne, c. 7. § 13. 6 G. 1. c. 21. § 45. 46. 8 G. 1. c. 18. § 21.

XXVIII. And be it further enacted, That from and after the passing of this Act every clause provision and regulation with respect to licences granted by the commissioners of customs for the importation of nutmegs mace cloves and cinnamon contained in an Act made in the eighth year of the reign of her Majesty Queen *Anne*, among other things for granting to her Majesty new duties of excise and upon several imported commodities; or in an Act passed in the sixth year of the reign of his Majesty King *George* the First, intituled *An Act for preventing Frauds and Abuses in the Public Revenues of Excise, Customs, Stamp Duties, Post Office, and House Money*; or in an Act made in the eighth year of the reign of his said Majesty King *George* the First, among other things for preventing clandestine running of goods and the danger of infection thereby, shall be and the same is hereby repealed.

Repeal of so much of 43 G. 3. c. 68. § 29. as provides that Russian or Turkish Tobacco shall be imported in British-built Ships.

XXIX. And be it further enacted, That from and after the passing of this Act so much and such part of an Act passed in the forty-third year of the reign of his said late Majesty King *George* the Third, intituled *An Act to repeal the Duties of Customs payable in* Great Britain, *and to grant other Duties in lieu thereof*, shall be repealed, whereby it is enacted or provided, that tobacco of the growth or production of any of the territories or dominions belonging to the Emperor of *Russia*, or of any of the territories or dominions belonging to the *Ottoman* or *Turkish* empire, shall be imported directly from the aforesaid territories or dominions respectively in *British*-built ships, owned navigated and registered according to

No. CX. 3 Geo. IV. c. 42.

law; and so much and such part of the said Act is hereby repealed accordingly.

Repeal of so much of 55 G. 3. c. 29. § 10. 11; and 57 G. 3. c. 4. as requires Goods of the Levant, or Raw Silk, or Mohair Yarn of the Grand Signior's Dominions, to be imported in British-built Ships only.

XXX. And be it further enacted, That from and after the passing of this Act so much and such parts of two Acts, the one passed in the fifty-fifth year of the reign of his late Majesty King *George* the Third, intituled *An Act to regulate the Trade between* Malta *and its Dependencies and his Majesty's Colonies and Plantations in* America, *and also between* Malta *and the United Kingdom;* and the other passed in the fifty-seventh year of the reign of his late Majesty King *George* the Third, intituled *An Act to extend the Privileges of the Trade of* Malta *to the Port of* Gibraltar shall be repealed, whereby it is enacted or provided that goods wares or merchandize being of the growth produce and manufacture of any country or place within the *Streights* or *Levant Seas*, or any raw silk or mohair yarn being the growth or production of any place within the dominions of the Grand Signior within the *Levant Seas*, shall be imported from the Island of *Malta* or the dependencies thereof or from the port of *Gibraltar* in *British*-built ships owned registered and navigated according to law and in no other ship or vessel whatever; and so much and such parts of the said recited Acts is and are hereby repealed accordingly.

Repeal of 56 G. 3. c. 37. as to German Prunes.

XXXI. And be it further enacted, That from and after the passing of this Act an Act passed in the fifty-sixth year of the reign of his late Majesty King *George* the Third, intituled *An Act to permit the Importation of Prunes the Produce of* Germany, shall be and the same is hereby repealed.

Repeal of 59 G. 3. c. 74. § 2. as to Importation of Tobacco from the Place of its Growth, in British Ships, or Ships of the Country.

XXXII. And be it further enacted, That from and after the passing of this Act so much and such parts of an Act passed in the fifty-ninth year of the reign of his said late Majesty King *George* the Third, intituled *An Act to allow the Importation of Tobacco from the* East Indies *and other Places, and for confining the Exportation of Tobacco from* Great Britain *and the Importation thereof into* Ireland *to Vessels of Seventy Tons Burthen and upwards*, shall be repealed, whereby it is enacted, that it shall be lawful for any person or persons to import unmanufactured tobacco from any place whatever, being the place of its growth, in any *British* ship or vessel owned registered and navigated according to law, or in any ship or vessel of the built of the country or place of which such tobacco is the growth and whereof the master and three-fourths of the mariners are at least of the said country or place, or in vessels which shall have been lawfully condemned as prize in such country or place and which shall be navigated as aforesaid; and so much and such parts of the said recited Act is and are hereby repealed accordingly.

Not to affect Penalties already incurred under recited Acts.

XXXIII. Provided always and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter or in any way affect any forfeiture fine pain penalty or punishment which may have taken place or been incurred for any offence against any of the Acts hereby repealed at any time before the passing of this Act, and for or in respect of which any action suit indictment information or other proceeding may have been brought had found commenced or prosecuted at any time before the passing of this Act; any thing in this present Act contained to the contrary in anywise notwithstanding.

[No. CXI.] 3 George IV. c. 43.—An Act for the Encouragement of Navigation and Commerce, by regulating the Importation of Goods and Merchandize, so far as relates to the Countries or Places from whence and the Ships in which such Importation shall be made.—[*24th June* 1822.]

3 Geo. IV. c. 43. 12 Car. 2. c. 18.

WHEREAS an Act was passed in the twelfth year of the reign of his Majesty King *Charles* the Second for the encouraging and increasing of shipping and navigation, on which the strength and safety of this kingdom do greatly depend: And whereas by an Act passed in the Par-

No. CXI.
3 Geo. IV. c. 43.

liament of *Ireland* in the twenty-seventh year of the reign of his late Majesty King *George* the Third, intituled *An Act for the further Increase and Encouragement of Shipping and Navigation*, it was enacted, that the said recited Act passed in *England* in the twelfth year of the reign of King *Charles* the Second, and every provision therein contained (so far as the same are not altered or repealed by the said Act of Parliament of *Ireland*) should be of full force and effect within *Ireland*: And whereas divers Acts have been from time to time passed for the further regulation of shipping navigation and commerce; and it is expedient that such of the provisions contained in the said several Acts as relate to the countries or places from whence and the ships in which goods and merchandize shall be imported into the united kingdom of *Great Britain* and *Ireland* should be revised and amended, and together with other regulations be declared and provided, so that the law by which such importation is to be regulated may be simplified and rendered more certain as well as more effectual in promoting the objects of the said several Acts, and in facilitating and extending the commerce of the realm: May it therefore please your Majesty, that for the establishing by law the several rules and provisions under which the importation of goods and merchandize into *Great Britain* shall be regulated so far as relates to the countries or places from whence and the ships in which such importations shall be made, it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act goods and merchandize being of the growth production or manufacture of *Asia Africa* or *America* shall be imported into the united kingdom of *Great Britain* and *Ireland* from any place whatever in *British*-built ships or vessels only, or in ships or vessels which by law are or may be entitled to the privileges of *British*-built ships, registered and navigated according to law, and not in any ship or vessel of any other country or place whatever, under penalty of the forfeiture of all such goods and merchandize, the growth production or manufacture of *Asia Africa* or *America*, as shall be imported from any place whatever in any ship or vessel not being a *British*-built ship or vessel, or not being entitled to the privileges of a *British*-built ship or vessel, registered and navigated according to law; except only in cases herein-after specially excepted or provided for.

Irish Act, 27 G. 3. c. 23.

Goods of Asia, Africa or America shall be imported into the United Kingdom from any Place in British-built Ships only; except as otherwise specially provided.

II. Provided always, and be it enacted, That all goods and merchandize, the growth production or manufacture of *Asia Africa* or *America*, which shall be imported into the United Kingdom from any port or place in *Europe* shall be so imported for exportation only, except in cases where it is by this Act otherwise specially provided.

Such Foreign Goods shall be imported from Europe for Exportation only, except otherwise provided.

III. Provided also, and be it enacted, That from and after the passing of this Act any goods or merchandize being of the growth production or manufacture of any country or place in *America* or the *West Indies* being or having been a part of the dominions of the King of *Spain*, and which goods or merchandize may at any time be lawfully imported into the United Kingdom in *British*-built ships, may be imported into the United Kingdom directly from the place of their growth production or manufacture, or from those ports in such country or place where such goods or merchandize can only be or have usually been first shipped for transportation in ships or vessels of the built of the country or place of which such goods or merchandize may be the growth production or manufacture; or in ships or vessels of the built of the port in such country or place where such goods or merchandize can only be or have usually been first shipped for transportation; and all which ships or vessels shall be wholly owned by the people of such country place or port, and navigated by the master and three-fourths of the mariners of such country place or port.

Goods of any Country or Place in America or the West Indies, belonging or having belonged to Spain, may be imported direct from the Place of Growth in Ships of the Country.

IV. Provided always, and be it enacted, That if it shall happen that any such country or place in *America* or the *West Indies* shall, before or at the time of the importation from thence into the United Kingdom of

If such Countries are under the Dominion of Spain, Goods may be imported from thence in Spanish Ships.

any goods or merchandize be under the dominion of the King of *Spain*, or if any doubt shall exist thereon, then and in any such case the goods and merchandize of the growth production or manufacture of such country or place in *America* or the *West Indies*, may be imported directly from thence into the United Kingdom in ships or vessels of the built of any country or place within the dominion of the King of *Spain*, and wholly owned by the people of such country or place, and navigated by a master and three-fourths of the mariners thereof of such country or place.

Not to permit Importation in Foreign Ships from any Port in America or West Indies where British Ships are not admitted.

V. Provided also, and be it enacted, That nothing contained in this Act shall extend or be construed to extend to admit the importation into the United Kingdom of any such goods or merchandize in any foreign ship or vessel from any such country port or place in *America* or the *West Indies*, except only from such country port or place where *British* ships or vessels shall be entitled to privileges equal to those by this Act granted to the ships and vessels of such country port or place.

Certain enumerated European Goods shall be imported in British Ships, or in Ships of the Country or Port of Export in Europe.

VI. And be it further enacted, That from and after the passing of this Act the several sorts of goods and merchandize herein-after particularly enumerated mentioned and described, being of the growth or production of any place in *Europe*, that is to say, masts timber boards salt pitch tar tallow rosin hemp flax currants raisins figs prunes olive oil corn or grain pot-ashes wine sugar vinegar brandy or tobacco shall be imported into the United Kingdom, either in *British*-built ships or vessels or in ships or vessels which by law are or may be entitled to the privileges of *British*-built ships or vessels registered and navigated according to law, or in ships or vessels of the built of and belonging to the country or place in *Europe* of which such goods and merchandize are the growth produce or manufacture respectively, or in ships or vessels of the built of and belonging to any port or place in *Europe* into which such goods and merchandize shall have been brought or imported, and in which the same shall have been landed; and all which foreign ships shall be wholly owned by the people of such country port or place, and shall be navigated by a master and three-fourths at least of the mariners thereof of such country port or place, and not in any other ship or vessel whatsoever, under penalty of the forfeiture of all such goods or merchandize as shall be imported from any place in *Europe* in any ship or vessel not being such *British*-built ship or vessel, or not being a ship or vessel entitled to the privileges of a *British*-built ship or vessel as aforesaid, or not being a ship or vessel of such country port or place in *Europe* as aforesaid and navigated as aforesaid, and also of the forfeiture of a sum not exceeding one hundred pounds by the master or person having the charge or command of such ship or vessel; except only in cases herein-after specially excepted or provided for.

Penalty.

Other Goods of Europe may be imported in any Ships from any Place as heretofore.

VII. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to prohibit the importation of any goods or merchandize the growth production or manufacture of any part of *Europe*, and not herein-before expressly specified enumerated or described, in any ship or vessel whatsoever and from any place whatsoever, as such goods or merchandize might have been imported into *Great Britain* at any time before the passing of this Act.

Goods of any of the Grand Seignior's Dominions may be imported in British or Turkish Vessels for Home Consumption.

VIII. Provided also, and be it enacted, That from and after the passing of this Act goods or merchandize the growth production or manufacture of any places within the dominions of the Grand Seignior may be imported into the United Kingdom in *British*-built ships or vessels registered and navigated according to law, or in ships or vessels of the built of any country or place within the dominions of the Grand Seignor, wholly owned by the people of such country or place and navigated by a master and three-fourths at least of the mariners thereof of such country or place; and that such goods and merchandize may be imported for consumption in the United Kingdom; any thing herein-before contained to the contrary in anywise notwithstanding.

Raw Silk and Mohair Yarn Produce of Asia, &c.

IX. Provided also, and be it enacted, That from and after the passing of this Act, raw silk and mohair yarn of the growth production or manufacture of *Asia*, exported to the united kingdom of *Great Britain* and *Ire-*

land from any port or places in the Streights or *Levant Seas* within the dominions of the Grand Seignior; and also raw silk or mohair yarn being the growth production or manufacture of any place within the dominions of the Grand Seignior within the *Levant Seas*, exported to the united kingdom of *Great Britain* and *Ireland* from the island of *Malta* or the dependencies thereof, or from the port of *Gibraltar*; and also all goods and merchandize the growth production or manufacture of the dominions of the Emperor of *Morocco*, and which shall have been imported into *Gibraltar* directly from any part of the dominions of the said emperor not lying or being to the southward of the port of *Mogadore* in *British*-built ships or vessels navigated and registered according to law, or in ships or vessels belonging to the subjects of the said Emperor of *Morocco*, and which shall be exported from *Gibraltar* to the united kingdom of *Great Britain* and *Ireland*; and also all diamonds pearls rubies emeralds and all other jewels and precious stones from any place whatever may be imported into the United Kingdom in *British*-built ships or vessels, registered and navigated according to law, for consumption in the United Kingdom; any thing in this Act contained to the contrary thereof in anywise notwithstanding; and that all such diamonds shall pass inwards without warrant or fee.

Raw Silk, &c. from Malta or Gibraltar.

All Goods of Morocco imported into Gibraltar.

Jewels, &c. may be imported for Home Consumption in British Ships.

Diamonds shall pass without Warrant.

X. And be it declared and enacted, That the island of *Malta* and its dependencies shall for all purposes whatever be deemed and taken to be in *Europe*.

Malta deemed to be in Europe.

XI. And be it further enacted, That from and after the passing of this Act it shall and may be lawful for the commissioners of his Majesty's Treasury of the united kingdom of *Great Britain* and *Ireland* or any three or more of them, and they are hereby authorized and empowered by warrant under their hands or the hands of any three or more of them to order and direct that any *British* ship or vessel, which at any time before the first day of *May* one thousand seven hundred and eighty-six was duly registered as a *British* ship, shall have and be entitled to all the privileges and advantages belonging to a *British*-built ship, and shall and may be registered as a *British*-built ship; provided it shall in all cases be made appear to the satisfaction of the said commissioners of the Treasury or any three or more of them that every such ship or vessel for which such privilege shall be claimed was actually and identically registered as a *British* ship before the said first day of *May* one thousand seven hundred and eighty-six, and that no foreigner had at any time while such ship or vessel was so registered any share property or concern in such ship or vessel, and that such ship or vessel has not been repaired in any foreign port at any expence beyond what is allowed by law, and that such ship or vessel is in every other respect entitled to the privilege of a *British* ship; and in such case every such ship or vessel from and after the date of the registry made of such ship or vessel as a *British*-built ship by virtue of such warrant shall be deemed and taken to be a *British*-built ship, and shall be entitled to all the privileges and advantages to which a *British*-built ship is by law entitled, and as if such ship or vessel had been originally *British*-built to all intents and purposes whatsoever.

Ships registered as British Ships before 1st May, 1786, may, on Warrant of the Treasury, be registered and privileged as British-built Ships.

XII. And be it further enacted, That from and after the passing of this Act any *British*-built ship or vessel which shall have been or shall be registered as such, and which after being so registered shall have been or shall be sold to or become wholly the property of any person or persons, not being a subject or subjects of his Majesty his heirs or successors, shall to all intents and purposes be deemed and taken to be a ship or vessel of the built of the foreign country port or place, if in Europe, of which the person or persons to whom such ship or vessel shall be sold shall be a subject or subjects or to which such person or persons shall belong; and it shall and may be lawful to import in any such ship or vessel any goods or merchandize from any such foreign country port or place in *Europe* in like manner as if such ship or vessel were of the built of such foreign country port or place in *Europe*; any law usage or custom to the contrary notwithstanding: Provided always, that in case any such *British*-

British-built Ships sold to Foreigners shall be deemed Foreign Ships, of the Country of the Purchasers, if in Europe;

No. CXI. 3 Geo. IV. c. 43.

built ship or vessel having once become the property of any person or persons not being a *British* subject or subjects shall again become the property of any *British* subject or subjects, otherwise than by capture and legal condemnation, such ship or vessel shall not on any pretence whatsoever be again deemed taken or considered to be a *British*-built ship or vessel nor entitled to be registered as such, nor to any other privileges or advantages as a *British*-built ship or vessel, but shall be subject and liable to all the penalties and forfeitures to which foreign ships or vessels are or may be subject or liable by law.

but shall not become British Ships again except by Capture.

XIII. Provided always and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal such part of the herein-before recited Act passed in the twelfth year of the reign of King *Charles* the Second for the increasing of shipping and navigation as relates to bullion or to goods taken by way of reprisal.

Not to affect 12 Car. 2. c. 18. § 15. as to Bullion or Prize Goods.

XIV. Provided also and be it declared and enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter or in any way to affect or infringe any of the provisions contained in two Acts for the Union of *Great Britain* and *Ireland*, the one made in the Parliament of *Great Britain* in the thirty-ninth and fortieth years of the reign of his said late Majesty King *George* the Third, and the other made in the Parliament of *Ireland* in the fortieth year of the reign of his said late Majesty, or in any other Act or Acts in force immediately before the passing of this Act, by which the importation of goods or merchandize into *Great Britain* from *Ireland* or into *Ireland* from *Great Britain* is in any way permitted allowed restrained prohibited or regulated in any manner whatever; but that all goods and merchandize shall and may be imported into *Great Britain* from *Ireland* and into *Ireland* from *Great Britain* from and after the passing of this Act, in such manner and under and subject to such regulations in all respects as are contained in the said Acts for the Union of *Great Britain* and *Ireland*, or in any other Act or Acts in force immediately before the passing of this Act, until provision shall be otherwise made by Parliament with respect to the same; any thing in this Act contained to the contrary in anywise notwithstanding.

Not to affect Intercourse between Great Britain and Ireland.

XV. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to alter or repeal or in any way to affect or infringe any Act or Acts or any provisions contained in any Act or Acts in force immediately before the passing of this Act relating to the importation of any goods and merchandize whatsoever from any *British* colony plantation territory or dominion in *America* or the *West Indies*; and that all goods and merchandize the growth produce or manufacture of any such *British* colony plantation territory or dominion, and all goods and merchandize whatsoever which may by law be imported from any such *British* colony plantation territory or dominion, shall and may be imported and shall continue to be imported in such manner and under all such rules and regulations restrictions penalties and forfeitures in all respects as are contained in any Act or Acts in force in relation to such goods and merchandize immediately before the passing of this Act; any thing in this Act contained to the contrary in anywise notwithstanding.

Not to affect the Importation of Goods, the Produce of the British Colonies in America or the West Indies.

XVI. Provided also and be it enacted, That nothing in this Act contained shall extend to be construed to extend to alter or repeal any Act or Acts or any provisions contained in any Act or Acts in force immediately before the passing of this Act which in any way relate to the trade or commerce of the Islands of *Guernsey Jersey Sark Alderney* or *Man*, or to the trade between *Great Britain* or *Ireland* and those islands respectively; but that the trade and commerce of the said islands respectively shall continue to be carried on and regulated in all respects as if this Act had not been made.

Act not to extend to Guernsey, Jersey, Sark, Alderney, or Man.

XVII. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend in any way to alter or repeal an Act passed in the forty-ninth year of the reign of his late Majesty King *George* the Third, intituled *An Act to permit the Trade between* Great Britain *and the United States of* America *to be carried on in Ships*

Not to affect American Trade Acts, 49 G. 3. c. 59. 59 G. 3. c. 54;

or Vessels belonging to the Inhabitants of the said States, or in an Act made in the fifty-ninth year of his said late Majesty's reign, among other things for carrying into effect a convention of commerce concluded between his Majesty and the United States of *America*, by virtue of which goods wares or merchandize of the growth produce and manufacture of any of the said United States may be imported directly from any of the territories of the said United States in ships or vessels belonging to the inhabitants of the said States, or in such other ships and vessels as are described in the said recited Acts: Provided nevertheless, that nothing in the said recited Acts of the forty-ninth and fifty-ninth years of his late Majesty's reign shall extend or be construed to extend to the restraining or preventing the importation into *Great Britain* of goods or merchandize being of the growth production or manufacture of any part of the United States of *America* in *British*-built ships or vessels registered and navigated according to law in like manner and under such rules and regulations as goods or merchandize of the growth production or manufacture of any other part of *America* may by law be so imported.

but these Acts shall not restrain Importation from United States in British Ships.

XVIII. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to alter or repeal an Act passed in the fifty-first year of the reign of his late Majesty King *George* the Third, intituled *An Act for carrying into Effect the Provisions of a Treaty of Amity, Commerce and Navigation concluded between his Majesty and his Royal Highness the Prince Regent of* Portugal; or an Act made in the fifty-ninth year of the reign of his said late Majesty, among other things for carrying into effect a treaty with the Prince Regent of *Portugal*, by virtue of which any goods wares and merchandize being the growth production or manufacture of any of the territories or dominions of the Crown of *Portugal* which are not prohibited by law to be imported from other foreign countries, and also elephants' teeth and ivory may be imported direct from any such territories or dominions in ships or vessels the built of any of the said territories or dominions of the Crown of *Portugal*, or in such other ships or vessels as are described in the said Acts: Provided nevertheless, that nothing in the said recited Acts of the fifty-first and fifty-ninth years of his late Majesty's reign shall be construed to restrain or prevent the importation of goods or merchandize being of the growth production or manufacture of any of the territories or dominions belonging to the Crown of *Portugal* in *British*-built ships or vessels registered and navigated according to law and in like manner and under such rules and regulations as goods and merchandize of the growth production or manufacture of any part of *Asia Africa* or *America* may by virtue of this present Act be so imported.

Not to affect Portuguese Trade Acts, 51 G. 3. c. 47. 59 G. 3. c. 54.

but those Acts shall not affect Importation from Portuguese Dominions in British Ships.

XIX. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to alter or in any way to affect the rights and privileges of the United Company of Merchants of *England* trading to the *East Indies* as granted to or vested in the said company by charter or by any Act or Acts of Parliament; nor to repeal or alter or in any way to affect or infringe the provisions contained in an Act made in the fifty-third year of the reign of his late Majesty King *George* the Third, intituled *An Act for continuing in the* East India *Company, for a further Term, the Possession of the* British *Territories in* India, *together with certain exclusive Privileges; for establishing further Regulations for the Government of the said Territories and the better Administration of Justice within the same; and for regulating the Trade to and from the Places within the Limits of the said Company's Charter;* or in an Act made in the fifty-seventh year of his said late Majesty's reign, intituled *An Act to regulate the Trade to and from the Places within the Limits of the Charter of the* East India *Company and certain Possessions of his Majesty in the* Mediterranean; or in any other Act or Acts in force immediately before the passing of this Act relating to the trade or commerce with any of the countries territories or places situate within the limits of the charter granted to the said united company of merchants of *England* trading to the *East Indies* or to the trade and commerce to be carried on by the said *East India* Company, or by any *British* subjects to and from the said countries territories or places under the provisions and regu-

Not to affect East India Trade under 53 G. 3. c. 155. 57 G. 3. c. 36. or other Acts.

No. CXI. 3 Geo. IV. c. 43.

lations of the said recited Acts or of any other Act or Acts; but that the trade and commerce with all the said countries territories or places respectively shall continue to be carried on in such manner and under and subject to such regulations in all respects as are contained in the said recited Acts respectively or in any Act or Acts for continuing or amending the same or any of them, or in any other Act or Acts relating to such trade and commerce; any thing in this Act contained to the contrary notwithstanding.

Not to affect 49 G. 3. c. 17. 57 G. 3. c. 1. for regulating Trade to Cape of Good Hope and Mauritius.

XX. Provided also, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter any of the provisions contained in an Act passed in the forty-ninth year of the reign of his late Majesty King *George* the Third, intituled *An Act to authorise his Majesty, during the present War, to make Regulations respecting the Trade and Commerce to and from the* Cape of Good Hope; or in an Act passed in the fifty-seventh year of his said late Majesty's reign for continuing and extending the provisions of the said recited Act of the forty-ninth year, and also for regulating the trade of the Island of *Mauritius* (which said recited Acts have been continued and are now in force), whereby his Majesty is authorised by and with the advice of his Privy Council to give such directions and to make such regulations touching the trade and commerce to and from the *Cape of Good Hope*, and to and from all islands colonies or places and the territories and dependencies thereof, to his Majesty belonging or in his possession in *Africa* or *Asia* to the eastward of the *Cape of Good Hope* (excepting only the possessions of the *East India* Company) as to his Majesty in Council shall appear most expedient and salutary.

Not to affect 18 G. 2. c. 26. § 10. 11. whereby Tea may be imported from Europe in British Ships by Licence from the Treasury.

XXI. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter such part of an Act made in the eighteenth year of the reign of King *George* the Second among other things for repealing the inland duty upon tea sold in *Great Britain* and granting other duties in lieu thereof, and for better securing the duties on tea, or in any other Act or Acts whereby it is enacted or provided that it shall and may be lawful to and for the United Company of Merchants of *England* trading to the *East Indies* and their successors by licence under the hands of the commissioners of his Majesty's Treasury, and also to and for any other person or persons licenced by the said commissioners of the Treasury to import in *British*-built ships registered and navigated according to law from any ports of *Europe* such quantities of tea as shall be specified in such licences respectively and under and subject to such restrictions limitations rules methods and directions as are prescribed and required under or by virtue of the said Act or Acts or any of them.

Not to affect Importation of Corn under 46 G. 3. c. 97. 55 G. 3. c. 26. &c.

XXII. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter any thing contained in an Act made in the forty-sixth year of the reign of his late Majesty King *George* the Third, intituled *An Act to permit the Interchange of every Species of Grain between* Great Britain *and* Ireland; or in an Act made in the fifty-fifth year of his said late Majesty's reign, intituled *An Act to amend the Laws now in force for regulating the Importation of Corn*; or in any other Act or Acts in force on or before the passing of this Act, whereby the importation of corn grain rice meal malt flour bread or biscuit is permitted prohibited or regulated.

Not to affect Regulations as to Import in Packet Boats under 13. 14 Car. 2. c. 11. § 22. 55 G. 3. c. 153.

XXIII. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to alter or repeal any of the provisions contained in an Act passed in the thirteenth and fourteenth years of the reign of King *Charles* the Second, intituled *An Act for preventing Frauds, and regulating Abuses in his Majesty's Customs*; or in an Act passed in the fifty-fifth year of the reign of his late Majesty King *George* the Third, intituled *An Act for granting certain Rates on the Postage of Letters to and from* Great Britain, *the* Cape of Good Hope, *the* Mauritius, *and the* East Indies; *and for making certain Regulations respecting the Postage of Ship Letters, and of Letters in* Great Britain; so far as either of the said recited Acts relate to the importation of goods or merchandize into *Great Britain* in any ship vessel or boat appointed and

employed for the carriage of letters and packets under the several regulations and restrictions prescribed and directed by either of the said recited Acts.

XXIV. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to allow the importation of fresh herrings fresh cod or haddock coal fish gull fish or grill fish or of any ling herring cod or pilchard fresh or salted dried or bloated or of any salmon eel or congers or of any sort of fish taken or caught by or bought of or received from any foreigner or foreigners or out of any stranger or strangers bottom in any other manner than such importation is permitted or restrained under and by virtue of the regulations contained in an Act made in the fifteenth year of the reign of King *Charles* the Second, intituled *An Act for the Encouragement of Trade;* and in an Act made in the eighteenth year of the reign of King *Charles* the Second, intituled *An Act against importing Cattle from* Ireland *and other parts beyond the Seas, and Fish taken by Foreigners;* and in an Act made in the tenth and eleventh years of the reign of King *William* the Third, intituled *An Act for making* Billingsgate *a free Market for the Sale of Fish;* and in an Act made in the first year of the reign of King *George* the First, intituled *An Act for the better preventing fresh Fish taken by Foreigners being imported into this Kingdom, and for the Preservation of the Fry of Fish, and for the giving Leave to import Lobsters and Turbots in Foreign Bottoms, and for the better Preservation of Salmon within several Rivers in that Part of this Kingdom called* England, or in any other Act or Acts relating to the importation of fish into any part of the United Kingdom.

Not to allow Importation of Fish contrary to Stats. 15 Car. 2. c. 7. § 16: 18 C. 2. c. 2. § 2.: 10 & 11 W. 3. c. 24. § 13 & 14: 1 G. 1. st. 2. c. 18. § 1 & 2.

XXV. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter so much of the said last recited Act of the first year of the reign of King *George* the First, whereby it is enacted, that it shall and may be lawful for any person whatsoever, as well foreigners as *British*, freely to import bring in and sell in any ship or vessel whatsoever any quantity of lobsters or turbots whether they be of foreign or *British* catching.

Not to affect Importation of Lobsters and Turbots under 1 G. 1. st. 2. c. 18. § 10.

XXVI. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter any of the provisions contained in an Act passed in the ninth year of the reign of his late Majesty King *George* the Third, intituled *An Act to permit the free Importation of certain Raw Hides and Skins from* Ireland *and the* British *Plantations in* America, *for a limited Time; and for taking off the Duties upon Seal Skins tanned or tawed in this Kingdom, and for granting another Duty in lieu thereof; for indemnifying all Persons with respect to advising or executing any of his Majesty's Orders in Council, prohibiting the Importation of Raw Hides, Horns, and Hoofs of infected Cattle, and to authorise the Prohibition of the Importation of such Hides, Horns, and Hoofs for the future;* by which his Majesty is authorised from time to time by proclamation or order in council to prohibit generally or from any particular country the importation of any hides or skins horns or hoofs or any other part of any cattle or beast for such time or times and under such regulations as his Majesty shall judge most expedient and effectual to prevent any contagious distemper from being brought into the Kingdom.

Not to affect Orders of Council under 9 G. 3. c. 39. s. 10. for preventing Importation of infected Hides, &c.

XXVII. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter an Act made in the forty-seventh year of the reign of his late Majesty King *George* the Third, intituled *An Act to authorise his Majesty to permit the Importation of Naval Stores from any place in Ships belonging to States in Amity with his Majesty, and navigated in any Manner whatever;* nor to prevent the importation of naval stores under any licence granted in pursuance of the said recited Act.

Not to affect Importation of Naval Stores by Licence under 47 G. 3. st. 2. c. 27.

XXVIII. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter any of the provisions contained in an Act passed in the thirty-second year of the reign of his late Majesty King *George* the Third, for allowing the importation of quercitron or black oak bark when the price of oak bark shall

Not to affect Importation of Quercitron or Black Oak Bark under 32 G. 3. c. 49. § 1.

No. CXI. 3 Geo. IV. c. 43.

be under the prices mentioned in an Act of the twelfth year of his said Majesty reign, for encouraging the manufacture of leather.

Not to affect Duties payable to the Turkey Company or the Russia Company.

XXIX. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to alter repeal or in any way affect the payment of any duties payable by law to the several companies of merchants of *England*, commonly called or known by the name of the *Levant* Company or the *Turkey* Company and the *Russia* Company; but that all such duties shall continue and remain payable in like manner as before the passing of this Act.

Not to affect Duties of Package, &c. to the Corporation of London, &c.

XXX. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or in anywise alter the duties of package scavage bailage or portage or any other duties payable to the mayor and commonalty of the citizens of the city of *London*, or to the lord mayor of the said city for the time being, or to any other city or town corporate in the united kingdom of *Great Britain* and *Ireland*, or any other special privilege or exemption to which any person or persons or body or bodies politic or corporate within the said United Kingdom is or are now entitled by law, but the same shall continue as heretofore.

All Goods imported under this Act liable to Duties and Regulations under existing Acts.

XXXI. And be it further enacted, That all goods and merchandize which shall be imported pursuant to this Act and the importers of such goods and merchandize shall be subject and liable to the payment of all such duties of customs and excise and also to all such conditions rules regulations penalties and forfeitures as relate to the securing the payment of the said duties, and as relate to the due and regular entry landing warehousing securing and delivery of such goods and merchandize, and as relate to the burthen of the ships or vessels in which and the ports into which such goods and merchandize shall be imported and the packages in which the same shall be contained; and all such goods and merchandize and the importers thereof shall in all other respects not especially provided for by this Act be subject and liable to all such rules regulations penalties and forfeitures as any such goods and merchandize or the importers thereof are subject or liable to under or by virtue of any Act or Acts in force on or immediately before the passing of this Act, or as shall be in force with respect to any such goods or merchandize or the importers thereof at the time of the importation thereof; any thing in this Act contained to the contrary in anywise notwithstanding.

Recovery of Forfeitures under this Act, as under English Act 12 C. 2. c. 18. Irish Act 27 G. 3. c. 23. and other existing Acts.

XXXII. And be it further enacted, That all penalties and forfeitures imposed by this Act or which shall or may be incurred for any offence against this Act shall and may be sued for recovered levied or mitigated by such ways means or methods as any fine penalty or forfeiture against the said several Acts of the twelfth year of the reign of King *Charles* the Second and of the twenty-seventh year of the reign of King *George* the Third, for the encouraging and increasing of shipping and navigation may be sued for recovered levied or mitigated under the said recited Acts respectively, or as any fine penalty or forfeiture may be sued for recovered levied or mitigated by any law or laws relating to the importation of goods or merchandize into *Great Britain* and *Ireland* respectively, or by action of debt bill plaint or information in any of his Majesty's courts of record at *Westminster* or *Dublin* or in the Court of Exchequer in *Scotland* respectively; and that one moiety of every such penalty or forfeiture shall be to his Majesty his heirs and successors and the other moiety to him or them who shall inform discover or sue for the same.

Act may be altered or repealed this Session.

XXXIII. And be it further enacted, That this Act may be amended altered or repealed by any Act or Acts to be made in this present Session of Parliament.

[No. CXII.] 3 George IV. c. 44.—An Act to regulate the Trade between his Majesty's Possessions in *America*

and the *West Indies* and other Places in *America* and the *West Indies*.—[24*th June* 1822.]

No. CXII.
3 Geo. IV. c. 44.

3 Geo. IV. c. 44.

Acts regulating the Importation and Exportation of certain Articles into and from certain Colonies in America and the West Indies herein recited repealed; viz.

WHEREAS divers Acts of Parliament have been from time to time passed for regulating the importation and exportation of certain articles into and from certain territories islands and ports under the dominion of his Majesty in *America* and the *West Indies*; and it is expedient that the said several Acts should be repealed, and other provisions made in lieu thereof: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, an Act passed in the Twenty-eighth year of the reign of his late Majesty King *George* the Third, intituled 'An Act for regulating the Trade between the Subjects of his Majesty's Colonies and Plantations in *North America*, and in the *West India* Islands, and the Countries belonging to the United States of *America*, and between his Majesty's said Subjects and the Foreign Islands in the *West Indies*;' also, an Act passed in the Twenty-eighth Year of the Reign of his late Majesty King *George* the Third, intituled 'An Act to allow the Importation of Rum and other Spirits from his Majesty's Colonies or Plantations in the *West Indies*, into the Province of *Quebec*, without Payment of Duty, under certain Conditions and Restrictions;' also, an Act passed in the Twenty-ninth Year of the Reign of his said late Majesty, intituled 'An Act to enable his Majesty to authorize, in case of Necessity, the Importation of Bread, Flour, Indian Corn, and Live Stock, from any of the Territories belonging to the United States of *America*, into the Province of *Quebec*, and all the Countries bordering on the Gulf of *Saint Lawrence*, and the Islands within the said Gulf, and to the Coast of *Labrador*;' also, another Act passed in the Twenty-ninth Year of the Reign of his said late Majesty, intituled 'An Act for explaining and amending an Act passed in the last Session of Parliament, intituled "An Act to regulate the Trade between "the Subjects of his Majesty's Colonies and Plantations in *North America*, and in the *West India* Islands, and the Countries belonging to the "United States of *America*, and between his Majesty's said Subjects and "the Foreign Islands in the *West Indies*;" also, an Act passed in the Thirtieth Year of the Reign of his said late Majesty, intituled 'An Act to amend Two Acts made in the Twenty-eighth year of the Reign of his present Majesty, the one intituled "An Act for regulating the Trade "between the Subjects of his Majesty's Colonies and Plantations in "*North America*, and in the *West India* Islands, and the Countries be-"longing to the United States of *America*, and between his Majesty's said "Subjects and the Foreign Islands in the *West Indies*;" and the other intituled "An Act to allow the Importation of Rum or other Spirits "from his Majesty's Colonies or Plantations in the *West Indies*, into the "Province of *Quebec*, without Payment of Duty, under certain Con-"ditions and Restrictions;" also, an Act passed in the Thirty-first Year of the Reign of his said late Majesty, intituled 'An Act to amend an Act made in the Twenty-eighth Year of his present Majesty's Reign, for regulating the Trade between the Subjects of his Majesty's Colonies and Plantations in *North America*, and in the *West India* Islands, and the Countries belonging to the United States of *America*, and between his Majesty's said Subjects and the Foreign Islands in the *West Indies*; and also, an Act made in the Twenty-seventh Year of his present Majesty's Reign, for allowing the Importation and Exportation of certain Goods Wares, and Merchandize in the Ports of *Kingston*, *Savannah la Mar*, *Montego Bay*, and *Santa Lucia*, in the Island of *Jamaica*, in the Port of *Saint George* in the Island of *Grenada*, in the Port of *Roseau* in the Island of *Dominica*, and in the Port of *Nassau* in the Island of *New Providence*, one of the *Bahama Islands*, under certain Regulations and Restrictions;' also, an Act passed in the Thirty-third Year of the Reign of his said late Majesty, intituled 'An Act to amend an Act passed in the Twenty-seventh Year of his present Majesty's Reign, for allowing the Importation

28 G. 3. c. 6.
28 G. 3. c. 39.
29 G. 3. c. 16.
29 G. 3. c. 56.
30 G. 3. c. 8.
31 G. 3. c. 38.
33 G. 3. c. 50.

No. CXII. 3 Geo. IV. c. 44.

and Exportation of certain Goods, Wares, and Merchandize, in Foreign Ships, into and from certain Ports and Places in the *West Indies*; and for amending so much of an Act made in the Thirty-second Year of the Reign of his present Majesty, as relates to permitting the Importation of Sugar in the *Bahama* and *Bermuda Islands*, in Foreign Ships; and so much of Two Acts made in the Twenty-eighth and Thirty-first Years of his present Majesty's Reign, as prohibits the Importation of Timber into any Island under the Dominion of his Majesty in the *West Indies*, from any Foreign Colony or Plantation in the *West Indies* or *South America*; and so much of the said Act made in the Twenty-eighth Year of his present Majesty's Reign, as prohibits the Importation of Pitch, Tar, and Turpentine into *Nova Scotia* or *New Brunswick*, from any Country belonging to

44 G. 3. c. 101. the United States of *America*;' also, an Act passed in the Forty-fourth Year of the Reign of his said late Majesty, intituled 'An Act for permitting, until the First Day of *August* One thousand eight hundred and seven, the Exportation of Salt from the Port of *Nassau* in the Island of *New Providence*, the Port of *Exuma* and the Port of *Crooked Island* in the *Bahama Islands*, in Ships belonging to the Inhabitants of the United States of *America*, and coming in Ballast;' also, an Act passed in the

45 G. 3. c. 57. Forty-fifth Year of the Reign of his said late Majesty, intituled 'An Act to consolidate and extend the several Laws now in force, for allowing the Importation and Exportation of certain Goods and Merchandize into and

46 G. 3. c. 72. from certain Ports in the *West Indies*;' also, an Act passed in the Forty-sixth Year of the Reign of his said late Majesty, intituled 'An Act for enabling his Majesty to permit the Importation and Exportation of certain Goods and Commodities into and from the Port of *Road Harbour* in

48 G. 3. c. 125. the Island of *Tortola*;' also, an Act passed in the Forty-eighth Year of the Reign of his said late Majesty, intituled 'An Act to permit the Importation of Rice, Flour, and Grain from any Foreign Colonies on the Continent of *America*, into certain Ports in the *West Indies*, and to allow certain Articles to be imported from the United States of *America* into the *British* Provinces in *North America*, for the Purpose of Exportation to

49 G. 3. c. 22. the *British* Islands in the *West Indies*;' also, an Act passed in the Forty-ninth Year of the Reign of his said late Majesty, intituled 'An Act for allowing the Importation and Exportation of certain Goods and Commodities into and from the Port of *Falmouth*, in the Island of *Jamaica*;'

52 G. 3. c. 79. also, an Act passed in the Fifty-second Year of the Reign of his said late Majesty, intituled 'An Act to allow *British* Plantation Sugar and Coffee, imported into *Bermuda* in *British* Ships, to be exported to the Territories of the United States of *America* in Foreign Ships or Vessels, and to permit Articles, the Production of the said United States, to be imported into the said Island in Foreign Ships or Vessels;' also, another

52 G. 3. c. 99. Act passed in the said Fifty-second Year of the Reign of his said late Majesty, intituled 'An Act for allowing certain Articles to be imported into the *Bahama Islands*, and exported therefrom in Foreign Vessels, and for encouraging the Exportation of Salt from the said Islands;' also, an

53 G. 3. c. 37. Act passed in the Fifty-third Year of the Reign of his said late Majesty, intituled 'An Act to amend an Act of the Twenty-eighth Year of his present Majesty, for allowing the Importation of Rum or other Spirits from his Majesty's Colonies or Plantations in the *West Indies* into the Province of *Quebec*, without Payment of Duty;' also, another Act passed

53 G. 3. c. 50. in the Fifty-third Year of the Reign of his said late Majesty, intituled 'An Act for further allowing the Importation and Exportation of certain

54 G. 3. c. 48. Articles at the Island of *Bermuda*;' also, an Act passed in the Fifty-fourth Year of the Reign of his said late Majesty, intituled 'An Act to revive and make perpetual certain Acts for consolidating and extending the several Laws in force, for allowing the Importation and Exportation of certain Articles into and from certain Ports in the *West Indies*;' also,

57 G. 3. c. 28. an Act passed in the Fifty-seventh year of the Reign of his said late Majesty, intituled 'An Act to extend the Powers of Two Acts, for allowing *British* Plantation Sugar and Coffee, and other Articles, imported into *Bermuda* in *British* Ships, to be exported to *America* in Foreign Vessels, and to permit Articles, the Produce of *America*, to be imported into the said Island

in Foreign Ships, to certain other Articles;' also, another Act passed in the said Fifty-seventh Year of the Reign of his said late Majesty, intituled 'An Act to extend several Acts for allowing the Importation and Exportation of certain Goods and Merchandize to *Porta Maria* in the Island of *Jamaica*, and to the Port of *Bridge Town* in the Island of *Barbadoes*;' also, an Act passed in the Fifty-eighth Year of the Reign of his said late Majesty, intituled 'An Act to allow, for Three Years, and until Six Weeks after the Commencement of the then next Session of Parliament, the Importation, into Ports specially appointed by his Majesty, within the Provinces of *Nova Scotia* and *New Brunswick*, of the Articles therein enumerated, and the Re-exportation thereof from such Ports;' also, an Act passed in the said Fifty-eighth Year of the Reign of his said late Majesty, intituled 'An Act to permit the Importation of certain Articles into his Majesty's Colonies or Plantations in the *West Indies*, or on the Continent of *South America*, and also certain Articles into certain Ports in the *West Indies*;' also, an Act passed in the Fifty-ninth Year of the Reign of his said late Majesty, intituled 'An Act to make perpetual an Act of the Forty-fourth Year of his present Majesty, for permitting the Exportation of Salt from the Port of *Nassau* in the Island of *New Providence*, the Port of *Eruma*, and the Port of *Crooked Island*, in the *Bahama Islands*, in *American* Ships coming in Ballast;' also, an Act passed in the Fifty-ninth Year of the Reign of his said late Majesty, intituled 'An Act to extend the Provisions of Three Acts of the Fifty-second, Fifty-third, and Fifty-seventh Years of his present Majesty, for allowing *British* Plantation Sugar and Coffee, and other Articles, imported into *Bermuda* in *British* Ships, to be exported to *America* in Foreign Vessels, and to permit Articles the Produce of *America*, to be imported into *Bermuda* in Foreign Ships, to certain other Articles;' also, an Act passed in the First Year of the Reign of his present Majesty, intituled 'An Act to extend several Acts for allowing the Importation and Exportation of certain Goods and Merchandizes to *Morant Bay* in the Island of *Jamaica*;' also, another Act passed in the First Year of his present Majesty's Reign, intituled 'An Act to permit the Importation of Coffee from any Foreign Colony or Plantation in *America*, into the Port of *Bridge Town* in *Barbadoes*;' also, an Act passed in the First and Second Year of the Reign of his present Majesty, intituled 'An Act to make perpetual an Act of the Fifty-eighth Year of his late Majesty, to allow the Importation, into certain Ports in *Nova Scotia* and *New Brunswick*, of certain enumerated Articles, and the Re-exportation thereof from such Ports;' shall be and the same are hereby repealed.

57 G. 3. c. 74.
58 G. 3. c. 19.
58 G. 3. c. 27.
59 G. 3. c. 18.
59 G. 3. c. 55.
1 G. 4. c. 12.
1 G. 4. c. 32.
1 & 2 G. 4. c. 7.

II. Provided also, and be it further enacted, That nothing in this Act contained shall extend or be deemed or construed to extend to release or discharge any seizure of goods wares or merchandize, or of any ship or vessel, or to release or discharge any forfeiture or penalty incurred on or before the passing of this Act, but that the same may be prosecuted sued for recovered and divided in such and the like manner as any such seizure forfeiture or penalty might have been prosecuted sued for recovered and divided if this Act had not been made.

Act not to discharge any Seizure, Forfeiture, or Penalty already made or incurred.

III. And be it further enacted, That from and after the passing of this Act it shall be lawful to import into any of the ports enumerated in the Schedule annexed to this Act marked (A.) from any foreign country on the continent of *North* or *South America* or from any foreign island in the *West Indies*, whether such country or island as aforesaid shall be under the dominion of any foreign European Sovereign or State or otherwise, the articles enumerated in the Schedule annexed to this Act marked (B.) either in *British*-built ships or vessels owned and navigated according to law, or in any ship or vessel *bona fide* the built of and owned by the inhabitants of any country or place belonging to or under the dominion of the Sovereign or State of which the said articles are the growth produce or manufacture, such ship or vessel being navigated with a master and three-fourths of the mariners at least belonging to such

Articles enumerated in Schedule (B.) may be imported from any Foreign Country in North or South America or the West Indies, whether under the Dominion of any European Sovereign or otherwise, into the Ports mentioned in Schedule (A.) either in British Vessels, or Vessels owned by the Inhabitants of such Country, &c.

No. CXII. 3 Geo. IV. c. 44.

country or place; or in any *British*-built ship or vessel which has been sold to and become the property of the subjects of any such Sovereign or State, such ship or vessel last-mentioned being also navigated with a master and three-fourths of the mariners at least belonging to such country or place: Provided always, that no articles enumerated in the said Schedule shall be imported in any foreign ship or vessel or in any *British*-built ship or vessel so sold as aforesaid unless shipped and brought directly from the country or place of which they are the growth produce or manufacture.

Certain Articles may be exported from any of the Ports mentioned in Schedule (A.) in such British or Foreign Vessels, on certain Conditions.

IV. And be it further enacted, That it shall be lawful to export in any *British*-built ship or vessel owned and navigated according to law or in any foreign ship or vessel as aforesaid or in any *British*-built ship or vessel so sold as aforesaid from any of the ports enumerated in the Schedule annexed to this Act marked (A.) any article of the growth produce or manufacture of any of his Majesty's dominions, or any other article legally imported into the said ports, provided that the said articles when exported in any such foreign ship or vessel or in any *British*-built ship or vessel so sold as aforesaid shall be exported direct to the country or state in *America* or the *West Indies* to which such ship or vessel belongs as aforesaid, and before the shipment thereof security by bond shall be given to his Majesty his heirs and successors in a penalty equal to half the value of the said Articles; such bond to be entered into by the master and exporter before the collector or other chief officer of the customs of such colony plantation or island for the due landing the said articles at the port or ports for which entered, and for producing a certificate thereof within twelve months from the date of such bond under the hand and seal of the *British* consul or vice-consul resident at the port or place where the said articles shall have been landed; but in case there shall not be any such consul or vice-consul there resident such certificate to be under the hand and seal of the chief magistrate or under the hand and seal of two known *British* merchants residing at such port or place; but such bond may be discharged by proof on oath by credible persons that the said articles were taken by enemies or perished in the seas: Provided always, that nothing herein contained shall be construed to permit or allow the exportation of any arms or naval stores unless a licence shall have been obtained for that purpose from his Majesty's Secretary of State; and in case any such articles shall be shipped or waterborne for the purpose of being exported contrary to this Act, the same shall be forfeited and shall and may be seized and prosecuted as herein-after directed.

Not to allow the Exportation of Arms or Naval Stores without Licence of his Majesty's Secretary of State.

Not to exclude Foreign Vessels though not of the built of the Country, such Vessels having been before engaged in lawful Trade with the Colonies.

V. Provided always and be it further enacted, That for ten years after the passing of this Act nothing in this Act contained shall extend or be construed to extend to exclude from the trade allowed by this Act any foreign ship or vessel which previous to the passing of this Act may have been engaged in lawful trade with his Majesty's said colonies islands or plantations on account of such ship or vessel not being of the built of the country to which such ship or vessel may belong.

Proof of the Legality of Importation to be made before Goods shall be exported.

VI. And be it further enacted, That in case any doubt shall arise whether any goods wares or merchandize intended to be exported in any foreign ship or vessel under the authority of this Act had been legally imported into such port, the legality of such importation shall be made to appear to the satisfaction of the collector and comptroller or other principal officer of the customs of such port before such goods wares and merchandize shall be suffered to be shipped for exportation.

On Importation of Articles into the Ports mentioned in Schedule (A.) certain Duties specified in Schedule (C.) to be paid for the Use of the Colonies.

VII. And be it further enacted, That from and after the passing of this Act there shall be raised levied collected and paid unto his Majesty his heirs and successors upon the several articles enumerated or described in the said Schedule marked (C.) imported or brought into any of the ports enumerated in the Schedule marked (A.) from any such foreign island state or country, under the authority of this Act, the several

duties of customs as the same are respectively inserted or described and set forth in figures in the said Schedule annexed to this Act marked (C.), and the same shall be under the management of the Commissioners of the Customs in *England*, and shall be raised levied collected paid and recovered in such and the like manner and form and by such and the like rules ways means and methods respectively, and under such penalties and forfeitures as any other duties now payable to his Majesty on goods imported into any of the islands plantations colonies or territories belonging to or under the dominion of his Majesty in *America* or the *West Indies* are or may be raised levied collected paid and recovered by any Act or Acts of Parliament now in force, as fully and effectually to all intents and purposes as if the several clauses powers directions penalties and forfeitures relating thereto were particularly repeated and again enacted in the body of this Act; and the produce of such duties shall be paid by the collector of the Customs to the treasurer or receiver general of the colony province or plantation in which the same shall be respectively levied, to be applied to such uses and purposes as may be directed by the authority of the respective General Courts or General Assemblies of such colonies provinces or plantations.

How Duties are to be applied in Colonies having no General Courts or Assemblies.

VIII. And be it further enacted, That in case there shall be no general courts or general assemblies in the colony province or plantation in which the said duties shall have been levied and collected under the authority of this Act, the net proceeds of such duties shall then be applied and appropriated in such and the like manner and to such uses as any other duties levied and collected in any of his Majesty's colonies provinces or plantations in *America* or the *West Indies* not having general courts or general assemblies may now by any Act or Acts of Parliament passed in *Great Britain* or the United Kingdom of *Great Britain* and *Ireland*, or by any order of his Majesty in council, or by any proclamation issued in his Majesty's name, be appropriated and applied.

How Value of Articles subject to ad valorem Duty shall be ascertained.

IX. And be it further enacted, That in all cases where by the schedule marked (C.) the duties imposed upon the importation of articles into his Majesty's colonies plantations or islands in *America* or the *West Indies* are charged, not according to the weight gauge or measure but according to the value thereof, such value shall be ascertained by the declaration of the importer or proprietor of such articles or his known agent or factor in manner and form following; (that is to say),

'I *A. B.* do hereby declare, That the articles mentioned in the entry and contained in the packages [*here specifying the several packages and describing the several marks and numbers as the case may be*], are of the value of Witness my hand, the day of *A. B.*'

'The above Declaration, signed the day of in the presence of *C. D.* collector, or other principal officer.'

Which declaration shall be written on the warrant of entry of such articles, and shall be subscribed with the hand of the importer or proprietor thereof or his known agent or factor in the presence of the collector or other principal officer of the customs at the port of importation:

Provision, in case Articles are duly valued:

Provided, That if upon view and examination of such articles by the proper officer of the customs it shall appear to him that the said articles are not valued according to the true price or value thereof and according to the true intent and meaning of this Act, then and in such case the importer or proprietor or his known agent or factor shall be required to declare on oath before the collector or chief officer of the customs at the port of importation (which oath he is hereby authorised and required to administer) what is the invoiced price of such articles, and that he verily believes such invoice price is the current value of the articles at the place from whence the said articles were imported; and such invoice price, with the addition of ten pounds *per centum* thereon, shall be deemed and taken to be the value of the articles in such colony plantation or island as aforesaid, in lieu of the value so declared by the importer or proprietor

or his known agent or factor, and upon which the duties specified in the said schedule shall be charged and paid: Provided also, That if it shall appear to the collector or other chief officer of the customs that such articles have been invoiced below the real and true value thereof at the place from whence the same were imported, or if the invoice price is not known, the articles shall in such case be examined by two competent persons to be nominated and appointed by the governor or commander-in-chief of the colony plantation or island into which the said articles are imported; and such persons shall declare on oath before the collector or chief officer of the customs what is the true and real value of such articles in such colony plantation or island; and the value so declared on the oaths of such persons shall be deemed to be the true and real value of such articles, and upon which the duties specified in the said schedule marked (C.) shall be charged and paid.

or in case the Value or Invoice Price is not known.

X. And be it further enacted, That if the importer or proprietor of such articles shall refuse to pay the duties hereby imposed thereon, it shall and may be lawful for the collector or other chief officer of the customs where such articles shall be imported and he is hereby respectively required to take and secure the same, with the casks or other package thereof, and to cause the same to be publickly sold within the space of twenty days at the most after such refusal made and at such time and place as such officer shall by four or more days public notice appoint for that purpose, which articles shall be sold to the best bidder; and the money arising by the sale thereof shall be applied in the first place in payment of the said duties together with the charges that shall have been occasioned by the said sale; and the overplus if any shall be paid to such importer or proprietor or any other person authorised to receive the same.

Importer refusing to pay the Duties, the Articles to be sold, &c.

XI. And be it further enacted, That whenever any foreign article is liable to duty by this Act on the importation thereof into any of his Majesty's colonies plantations or islands in *America* or the *West Indies* under the provisions of this Act, the like duty shall be payable upon any such foreign article when imported into any such colonies plantations or islands direct from any part of the United Kingdom of *Great Britain* and *Ireland;* and such duty shall be raised levied collected and paid in such and the like manner and be appropriated and applied to such and the like uses as the duty payable upon the like article imported from any other place under the provisions of this Act is by this Act directed to be raised and applied.

Foreign Articles charged with Duty on Importation from place of Growth, to pay the same Duty as on Importation of such Articles direct from the United Kingdom.

XII. Provided always and be it further enacted, That if upon the importation of any article charged with duty by this Act the said article shall also be liable to the payment of duty under the authority of any colonial law equal to or exceeding in amount the duty charged by this Act, then and in such case the duty charged upon such article by this Act shall not be demanded or paid upon the importation of such article: Provided also, That if the duty payable under such colonial law shall be less in amount than the duty payable by this Act, then and in such case the difference only in the amount of the duty payable by this Act and the duty payable under the authority of such colonial law shall be deemed to be the duty payable by this Act; and the same shall be collected and paid in such and the like manner and appropriated and applied to such and the like uses as the duties specified in the said schedule annexed to this Act marked (C.) are directed to be collected paid appropriated and applied.

Duties not payable if Articles are liable to a Colonial Duty equal in amount to the Duties hereby charged.

If Colonial Duty be less, the Difference only to be paid.

XIII. And be it further enacted, That all sums of money granted and imposed by this Act as duties shall be deemed and are hereby declared to be sterling money of *Great Britain*, and shall be collected recovered and paid to the amount of the value which such nominal sums bear in *Great Britain;* and that such monies may be received and taken according to the proportion and value of five shillings and six pence the ounce in silver.

Duties to be Sterling Money at a certain Rate.

XIV. And be it further enacted, That any article enumerated in the schedule (B.) legally imported as aforesaid under the authority of this may be exported to any other British Colony, or to the United Kingdom.

Articles enumerated in Schedule (B.)

Act shall be allowed to be exported in any *British* ship or vessel owned and navigated according to law to any other *British* island colony or plantation in *America* or the *West Indies*, provided that upon the importation thereof into any such other *British* island colony or plantation proof shall be produced that the said duties due to his Majesty have been first paid in the colony or plantation into which the said articles shall have been first imported; and any article so imported in any ship or vessel as aforesaid shall be allowed to be exported to any part of the United Kingdom of *Great Britain* and *Ireland* under the rules regulations restrictions securities penalties and forfeitures particularly mentioned and provided in an Act of Parliament made in the twelfth year of the reign of King *Charles* the Second, intituled *An Act for the encouraging and increasing of Shipping and Navigation;* and in another Act of Parliament made in the twenty-second and twenty-third years of the reign of King *Charles* the Second, intituled *An Act to prevent the planting of Tobacco in* England, *and for regulating the Plantation Trade;* and in another Act of Parliament made in the twentieth year of his late Majesty's reign, intituled *An Act to allow the Trade between* Ireland *and the* British *Colonies in* America *and the* West Indies, *and the* British *Settlements on the Coast of* Africa, *to be carried on in like Manner as it is now carried on between* Great Britain *and the said Colonies and Settlements*, or in any of the said Acts with respect to the goods wares or merchandize therein enumerated or described.

12 C. 2. c. 18.

22 & 23 C. 2. c. 26.

20 G. 3. c. 10.

His Majesty may prohibit intercourse with any Country, where it shall appear that the Privileges granted by this Act to Foreign Vessels are not allowed to British Vessels trading with such Country, &c.

XV. And whereas it is the intention and meaning of this Act, That the privileges hereby granted to foreign ships and vessels shall be confined to the ships and vessels of such countries only as give the like privileges to *British* ships and vessels in their ports in *America* and the *West Indies;* Be it therefore enacted, That it shall be lawful for his Majesty his heirs and successors, by order in council from time to time when and as often as the same shall be judged expedient, to prohibit trade and intercourse under the authority of this Act with any country or island in *America* or the *West Indies* if it shall appear to his Majesty that the privileges granted by this Act to foreign ships and vessels are not allowed to *British* ships and vessels trading to and from any such country or island under the provisions of this Act; and in case such order of his Majesty in council shall be issued, then during the time that such order in council shall be in force none of the provisions of this Act, either as respects the laws herein repealed or to any other provisions of this Act, shall apply or be taken to apply to any country or state the trade with which under the provisions of this Act shall be prohibited by any such order of his Majesty in council; and if any goods whatever shall be imported from or shipped for the purpose of being exported to any such country or island in *America* or the *West Indies* in any foreign ship or vessel, after trade and intercourse therewith shall have been prohibited by any such order of his Majesty in council issued under the authority of this Act, all such goods together with the ship or vessel in which the same shall have been imported or in which the same shall have been shipped for the purpose of being exported as aforesaid shall be forfeited with all her guns furniture ammunition tackle and apparel; and in every such case the same shall and may be seized by any officer of his Majesty's customs or navy authorised or empowered to make seizures in cases of forfeiture and shall and may be prosecuted in manner as hereinafter directed.

His Majesty may extend the Provisions of this Act to other Ports than those enumerated in the Schedules.

XVI. And be it further enacted, That if his Majesty shall deem it expedient to extend the provisions of this Act to any port or ports not enumerated in the schedule marked (A.), it shall be lawful for his Majesty by order in council to extend the provisions of this Act to such port or ports; and from and after the day mentioned in such order in council all the privileges and advantages of this Act and all the provisions penalties and forfeitures therein contained shall extend and be deemed and construed to extend to any such port or ports respectively as fully as if the same had been inserted and enumerated in the said schedule at the time of passing this Act.

No. CXII.
3 Geo. IV. c. 44.

No Articles except such as are enumerated in the Schedule (B), to be imported, on pain of Forfeiture, with the Vessel, &ct

XVII. And be it further enacted, That no articles except such as are enumerated in the schedule marked (B.) shall be imported in any such *British*-built ship or vessel or in any such foreign ship or vessel or in any *British*-built ship or vessel so sold as aforesaid from any foreign country or state on the continent of *America* or island in the *West Indies* into any of the ports enumerated in the schedule marked (A.), or into any port which may be added to the schedule marked (A.), by virtue of any order in council as aforesaid on any pretence whatever, on pain of forfeiting such articles together with the ship or vessel in which the same shall have been imported and the guns tackle apparel and furniture of such ship or vessel; and in every such case the same shall and may be seized by any officer or officers of his Majesty's customs or navy who are or shall be authorised and empowered to make seizures in cases of forfeiture, and shall and may be prosecuted in such manner as herein-after directed.

No Articles to be imported or exported except to the Ports mentioned in Schedule (A.)

XVIII. And be it further enacted, That no articles whatever shall be imported or exported either in a *British*-built ship or vessel or in any such foreign ship or vessel as aforesaid from or to any foreign country on the continent of *North* or *South America*, or from or to any foreign island in the *West Indies*, into or from any port of any *British* colony plantation or island in *America* or the *West Indies* not enumerated in the schedule annexed to this Act marked (A.) on any pretence whatever, on forfeiture of such articles as also the ship or vessel in which the same shall be imported with all her guns furniture ammunition tackle and apparel.

Not to affect the Right of exporting in British Ships, the Produce of the Fisheries.

XIX. Provided always and be it further enacted, That nothing in this Act contained shall affect or be construed to affect the right which *British* subjects or others may enjoy under any law in force at the passing of this Act of exporting in *British* ships from ports not enumerated in the said schedule marked (A.) the produce of the fisheries carried on from any of his Majesty's said colonies plantations or islands.

How Penalties and Forfeitures are to be recovered.

XX. And be it further enacted, That all penalties and forfeitures imposed by this Act shall and may be respectively prosecuted sued for and recovered and divided in *Great Britain Guernsey Jersey* or the *Isle of Man*, or in any of his Majesty's colonies or islands in *America*, in the same manner and form and by the same rules and regulations in all respects in so far as the same are applicable as any other penalties and forfeitures imposed by any Act or Acts of Parliament made for the security of the revenue of the customs or for the regulation or improvement thereof or for the regulation of trade or navigation, and which were in force immediately before the passing of this Act may be respectively prosecuted sued for recovered and divided in *Great Britain Guernsey Jersey* or the *Isle of Man* or in any of his Majesty's colonies or islands in *America*.

SCHEDULES to which this Act refers.

SCHEDULE (A.)

List of Free Ports.

Kingston, Savannah Le Mar, Montego Bay, Santa Lucia, Antonio, Saint Ann, Falmouth, Maria, Morant Bay	Jamaica.
Saint George	Grenada.
Roseau	Dominica.
Saint John's	Antigua.
San Josef	Trinidad.
Scarborough	Tobago.
Road Harbour	Tortola.
Nassau	New Providence.
Pitt's Town	Crooked Island.
Kingston	Saint Vincent.
Port St. George and Port Hamilton	Bermuda.
Any Port where there is a Custom House	Bahamas.
Bridgetown	Barbadoes.

St. John's, St. Andrew's	New Brunswick.
Halifax	Nova Scotia.
Quebec	Canada.
St. John's	Newfoundland.
George Town	Demarara.
New Amsterdam	Berbice.
Castries	St. Lucia.
Basseterre	St. Kitts.
Charles Town	Nevis.
Plymouth	Montserrat.

SCHEDULE (B.)

Asses.
Barley.
Beans.
Biscuit.
Bread.
Beaver, and all sorts of Fur.
Bowsprits.
Calavances.
Cocoa.
Cattle.
Cochineal.
Coin and Bullion.
Cotton Wool.
Drugs of all sorts.
Diamonds and Precious Stones.
Flax.
Fruit and Vegetables.
Fustick, and all sorts of Wood for Dyers' use.
Flour.
Grain of any sort.
Garden Seeds.
Hay.
Hemp.
Heading Boards.
Horses.
Hogs.
Hides.
Hoops.
Hardwood or Mill Timber.
Indian Corn Meal.
Indigo.
Live Stock of any sort.
Lumber.
Logwood.
Mahogany and other Wood for Cabinet Wares.
Masts.
Mules.
Neat Cattle.
Oats.
Pease.
Potatoes.
Poultry.
Pitch.
Rye.
Rice.
Staves.
Skins.
Shingles.
Sheep.
Tar.
Tallow.
Tobacco.
Turpentine.
Timber.
Tortoise-shell.
Wool.
Wheat.
Yards.

SCHEDULE (C.)

A SCHEDULE of Duties payable on Articles imported into his Majesty's Possessions in America and the West Indies, from other Places in America and the West Indies, the Duties following; (that is to say),

	£. Sterling.	s.	d.
Barrel of Wheat Flour, not weighing more than 196lbs. net weight	0	5	0
Barrrel of Biscuit, not weighing more than 196lbs. net weight	0	2	6
For every Cwt. of Biscuit	0	1	6
For every 100lbs. of Bread, made from Wheat or other Grain, imported in Bags or Packages	0	2	6
For every Barrel of Flour, not weighing more than 196lbs. made from Rye, Peas, or Beans	0	2	6
For every Bushel of Peas, Beans, Rye, or Calavances	0	0	7
Rice, for every 100lbs. net weight	0	2	6
For every 1,000 Shingles, called Boston Chips, not more than 12 inches in length	0	7	0
For every 1,000 Shingles, being more than 12 inches in length	0	14	0
For every 1,000 Red Oak Staves	1	1	0
For every 1,000 White Oak Staves or Headings	0	15	0

No. CXII.
3 Geo. IV.
c. 44.

	£.	s.	d.
	Sterling.		
For every 1,000 Feet of White or Yellow Pine Lumber, of one inch thick	1	1	0
For every 1,000 Feet of Pitch Pine Lumber	1	1	0
Other Kinds of Wood and Lumber, per 1,000 feet	1	8	0
For every 1,000 Wood Hoops	0	5	3
Horses, for every 100*l.* of the value thereof	10	0	0
Neat Cattle, for every 100*l.* of the value thereof	10	0	0
All other Live Stock, for every 100*l.* of the value thereof	10	0	0

[No. CXIII.] 3 Geo. IV. c. 45.—An Act to regulate the Trade between his Majesty's Possessions in *America* and the *West Indies*, and other Parts of the World.—[*24th June* 1822.]

3 Geo. IV. c. 45.

WHEREAS it is expedient to allow greater freedom of trade and intercourse between the colonies plantations and islands belonging to his Majesty in *America* and in the *West Indies* and other parts of the world; and to repeal certain Acts now in force relating to the trade and intercourse hitherto allowed to be carried on between his Majesty's colonies plantations islands and places in *Europe* south of *Cape Finisterre*, and to make further provision for encouraging and extending the same: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That so much of an Act passed in the twenty-fifth year of the reign of King *Charles* the Second, intituled *An Act for the Encouragement of the* Greenland *and* Eastland *Trades, and for the better securing the Plantation Trade*, as imposes a duty upon the exportation of sugar tobacco cotton wool indigo ginger logwood fustic dying wood and cocoa nuts, from any of his Majesty's plantations in *America Asia* or *Africa*; also an Act passed in the fifty-first year of the reign of his late Majesty King *George* the Third, intituled *An Act to regulate the Trade between Places in* Europe *South of* Cape Finisterre, *and certain Ports in the* British *Colonies in* North America; also an Act passed in the fifty-second year of the reign of his said late Majesty, intituled *An Act to permit Sugar, Coffee, and Cocoa, to be exported from his Majesty's Colonies and Plantations to any Port in* Europe *to the South of* Cape Finisterre, *and Corn to be imported from any such Port and from the Coast of* Africa *into the said Colonies and Plantations, under Licences granted by the Collectors and Comptrollers of the Customs*; also so much of an Act passed in the fifty-fifth year of the reign of his said late Majesty, intituled *An Act to regulate the Trade between* Malta *and its Dependencies and his Majesty's Colonies and Plantations in* America, *and also between* Malta *and the United Kingdom*, as relates to the trade allowed to be carried on between the island of *Malta* and the dependencies thereof and his Majesty's colonies and plantations in *America*; also an Act passed in the fifty-seventh year of the reign of his said late Majesty, intituled *An Act to extend the Privileges of the Trade of* Malta *to the Port of* Gibraltar; also another Act passed in the fifty-seventh year of the reign of his said late Majesty, intituled *An Act to allow the Importation of Oranges and Lemons from the* Azores *and the* Madeiras *into the* British *Colonies in* North America shall be and the same are hereby repealed, save and except as to the recovery of any forfeiture or penalty incurred on or before the passing of this Act: Provided nevertheless, that all Acts expressly repealed by any of the said Acts shall be deemed and taken to be and shall remain repealed.

Acts and parts of Acts regulating Trade and Intercourse between the British Colonies and Europe repealed, viz.
25 C. 2. c. 7.
51 G. 3. c. 97.
52 G. 3. c. 98.
55 G. 3. c. 29.
57 G. 3. c. 4.
57 G. 3. c. 89.

Certain Articles may be exported from the British Colonies direct, to certain Ports of Europe, in British Ships:

II. And be it further enacted, That it shall be lawful to export from any of his Majesty's said colonies plantations and islands in any *British*-built ship or vessel, owned and navigated according to law, any articles the growth produce or manufacture of any such colony plantation or island, and any articles which have been legally imported into any such colony plantation or island, direct to any foreign port in *Europe* or in *Africa*

or to *Gibraltar* the island of *Malta* or the dependencies thereof or the islands of *Guernsey Jersey Alderney* or *Sark*; any thing contained in an Act made in *England* in the twelfth year of the reign of his Majesty King *Charles* the Second, intituled *An Act for the encouraging and increasing of Shipping and Navigation*, or of any other Act or Acts in force in the United Kingdom or in *Great Britain* or *Ireland* respectively, to the contrary notwithstanding.

To be regularly entered and shipped in the Presence of the Officers and at Ports only where Custom Houses are established, unless by special sufferance at other Places.

III. And be it further enacted, That before any such articles shall be laden or put on board any ship or vessel in the said colonies plantations or islands, the exporter shall make a regular entry thereof with the collector and comptroller of his Majesty's Customs, on which entry shall be indorsed the marks and numbers of the packages with the proper denomination of the goods contained therein, and also the place quay or wharf where the goods are intended to be laden; provided that no goods shall be laden at any place quay or wharf which shall not be situate within the limits of a port where a custom house is established, and at which place quay or wharf an officer shall be appointed to attend the lading and shipping of such goods or at such place or places as shall be mentioned in a sufferance or warrant to be taken out from the collector and comptroller of the customs for that purpose: Provided always, that nothing in this Act contained shall extend or be construed to extend to alter the existing regulations for lading and shipping the produce of the fisheries of the said colonies plantations or islands.

Regulations as to the Produce of Fisheries not to be affected.

The Goods must agree with the Entry, and be regularly shipped on pain of Forfeiture.

IV. And be it further enacted, That if upon examination of any goods allowed to be exported from any of the said colonies plantations or islands under the authority of this Act, either before or after the shipment, it shall be found that the weight or quantity thereof or the number of the casks or packages shall be greater than shall have been endorsed upon the entry, or if any articles are laden and put on board any ship or vessel for the purpose of being exported to any part of *Europe* or in *Africa* as aforesaid, without entry thereof being made with the proper officer of the customs, or shall be brought to any place quay or wharf or put into any hoy boat or other vessel for the purpose of being shipped on board any such ship or vessel for exportation to such foreign port of *Europe* or in *Africa* previous to such entry being made, or if any goods shall be put on board or attempted to be put on board any ship or vessel intending to proceed to any such port of *Europe* or *Africa* in any manner contrary to the directions of this Act, all such goods in every such case shall be forfeited, together with the hoy boat or other vessel or carriage whatever employed in shipping or attempting to ship such goods, and also the ship or vessel in which the same shall be laden; and all such goods vessels boats and carriages may be seized by any officer or officers of the customs, and the owner thereof shall forfeit double the value of such goods.

Ships clearing out from the Colonies are not to take on board any other Articles than such as are allowed to be exported by virtue of this Act.

V. And be it further enacted, That in case any ship or vessel clearing out from the said colonies plantations or islands under the authority of this Act shall take on board in any of the said colonies plantations or islands any other articles than such as are allowed to be on board and exported by virtue of this Act, all such articles so taken or laden on board such ship or vessel shall be forfeited and lost, and shall and may be seized by the commander or commander of any of his Majesty's ships or vessels of war or any commissioned warrant or petty officer specially authorised by him or them or by any officer or officers of the customs; and the master and shipper of any such goods shall severally forfeit double the value of the goods so laden or taken on board contrary to the directions of this Act.

Before Shipment of Fish, Oath to be made that it is the Produce of the British Fisheries.

VI. And be it further enacted, That the person exporting fish from any *British* colony or plantation in *North America* to any port or place as aforesaid under the authority of this Act shall make oath at the port of shipment before the chief officer of the customs at such port, or if there be no such chief officer of the customs then before a magistrate, or if there be no magistrate then before two respectable persons being at such port or ports (which oath such officer of the customs or magistrate or such respectable persons as aforesaid are hereby authorised to administer) that

No. CXIII. 3 Geo. IV. c. 45.

the said fish is the produce of the *British* fisheries really and *bona fide* taken and cured by his Majesty's subjects carrying on the said fisheries from some of the *British* colonies or plantations in *North America*.

Upon Shipment of pickled or dry Fish from Canada, Oath to be made of its being the Produce of the British Fisheries.

VII. And be it further enacted, That before the shipment of any pickled fish or dry fish for the purpose of exportation from *Canada* to any port or place as aforesaid under the authority of this Act, the person in whose possession the same shall have continued from the time of its being landed from the *British* fishing vessel employed in the taking it until the same shall be so shipped for exportation shall make oath before the chief officers of the customs at *Quebec* (who is hereby authorised to administer such oath) that the same is the produce of the *British American* fisheries really and *bona fide* taken and cured by his Majesty's subjects carrying on the said fisheries from some of the said colonies or plantations.

The Articles enumerated in the Schedule marked A. may be exported from certain Places in Europe, or in Africa, to his Majesty's Colonies, Plantations, or Islands, in British Ships.

VIII. And be it further enacted, That it shall be lawful to export in any *British* ship or vessel owned and navigated according to law from any foreign port in *Europe* or in *Africa* or from *Gibraltar* the island of *Malta* or the dependencies thereof, or the islands of *Guernsey Jersey Alderney* or *Sark* to any of his Majesty's colonies plantations or islands in *America* or the *West Indies* the articles enumerated or described in the Schedule hereunto annexed marked A.; any thing contained in an Act made in *England* in the fifteenth year of the reign of his Majesty King *Charles* the Second, intituled *An Act for the Encouragement of Trade*, or any other Act or Acts in force in the United Kingdom or in *Great Britain* or *Ireland* respectively, to the contrary notwithstanding.

Duties to be paid on Articles enumerated in the Schedule B. upon their Importation into the Colonies, &c.

IX. And be it further enacted, That from and after the passing of this Act there shall be raised levied collected and paid unto his Majesty his heirs and successors upon the importation of the several articles enumerated or described in the Schedule hereunto annexed marked B. into any of his Majesty's colonies plantations or islands in *America* or the *West Indies* under the authority of this Act from any port or place in *Europe* or *Africa* as aforesaid the several duties of customs as the same are respectively inserted or described and set forth in figures in the said Schedule marked B.; and the same shall be raised levied collected paid and received under the management of the Commissioners of the Customs in *England* in such and the like manner and form and by such and the like rules ways means and methods respectively, and under such penalties and forfeitures as any other duties now payable to his Majesty on goods imported into any of the islands plantations colonies or territories belonging to or under the dominion of his Majesty in *America* or the *West Indies* are or may be raised levied collected paid and recovered by any Act or Acts of Parliament now in force as fully and effectually to all intents and purposes as if the several clauses powers directions penalties and forfeitures relating thereto were particularly repeated and again enacted in the body of this Act; and the produce of such duties shall be paid by the collector of the customs to the treasurer or receiver general of the colony province or plantation in which the same shall be respectively levied, to be applied to such uses and purposes as may be directed by the authority of the respective general courts or general assemblies of such colonies provinces or plantations.

Appropriation of Net Proceeds of Duties in Colonies where there are no General Courts or Assemblies.

X. And be it further enacted, That in case there shall be no general courts or general assemblies in the colonies province or plantation in which the said duties shall have been levied under the authority of this Act, the net proceeds of such duties shall be applied and appropriated in such and the like manner and to such uses as any other duties levied and collected in any of his Majesty's colonies provinces or plantations in *America* or the *West Indies* not having general courts or general assemblies may now by any Act or Acts of Parliament passed in *Great Britain* or the United Kingdom of *Great Britain* and *Ireland* or by any order of his Majesty in council or by any proclamation issued in his Majesty's name be appropriated and applied.

XI. And be it further enacted, That in all cases where by the Schedule marked B. the duties imposed upon the importation of articles into his Majesty's colonies plantations or islands in *America* or the *West Indies* are charged, not according to the weight gauge tale or measure but according to the value thereof, such value shall be ascertained by the declaration of the importer or proprietor of such articles or his known agent or factor in manner and form following; that is to say,

How the Value of Articles subject to ad valorem Duties shall be ascertained.

'I *A. B.* do hereby declare, That the articles mentioned in the entry and contained in the packages [*here specifying the several packages and describing the several marks and numbers as the case may be*] are of the value of . Witness my hand the day of *A. B.*

'The above declaration signed the day of
in the presence of *C. D.*
Collector or other principal officer,

Which declaration shall be written on the warrant of entry of such articles and shall be subscribed with the hand of the importer or proprietor thereof or his known agent or factor in the presence of the collector or other principal officer of the customs at the port of importation: Provided that if upon view and examination of such articles by the proper officer of the customs it shall appear to him that the said articles are not valued according to the price and value thereof, and according to the true intent and meaning of this Act, then and in such case the importer or proprietor or his known agent or factor shall be required to declare on oath before the collector or chief officer of the customs at the port of importation (which oath he is hereby authorised to administer) what is the invoice price of such articles, and that he verily believes such invoice price is the current value of the articles at the place from whence the said articles were imported, and such invoice price with the addition of ten pounds *per centum* thereon shall be deemed and taken to be the value of such articles in such colony plantation or island as aforesaid in lieu of the value so declared by the importer or proprietor or his known agent or factor, and upon which the duties specified in the said table shall be charged and paid: Provided also, that if it shall appear to the collector or other chief officer of the customs that such articles have been invoiced below the real and true value thereof at the place from whence the same were imported, or if the invoice price is not known the articles shall in such case be examined by two competent persons to be nominated and appointed by the governor or commander in chief of the colony plantation or island into which the said articles are imported, and such persons shall declare on oath before the collector or other chief officer of the customs, which oath such collector or other chief officer of the customs is hereby authorised to administer, what is the true and real value of such articles in such colony plantation or island; and the value so declared on the oaths of such persons shall be deemed to be the true and real value of such articles and upon which the duties specified in the said Schedule marked B. shall be charged and paid.

Provision, in case Articles are not duly valued:

or in case the Value or Invoice Price is not known.

XII. And be it further enacted, That if the importer or proprietor of such articles shall refuse to pay the duties hereby imposed thereon it shall and may be lawful for the collector or other chief officer of the customs where such articles shall be imposed and he is hereby respectively required to take and secure the same with the casks or other package thereof, and to cause the same to be publicly sold within the space of twenty days at the most after such refusal made and at such time and place as such officer shall by four or more days public notice appoint for that purpose, which articles shall be sold to the highest bidder and the money arising from the sale thereof shall be applied to the payment of the said duties together with the charges which shall have been occasioned by the said sale, and the overplus (if any) shall be paid to such importer proprietor or any other person authorised to receive the same.

Importer refusing to pay the Duties, the Articles to be publicly sold, and the Duties and Charges deducted.

No. CXIII. 3 Geo. IV. c. 45.

XIII. Provided always, and be it further enacted, That if upon the importation of any article charged with duty by this Act the said article shall also be liable to the payment of duty under the authority of any colonial law equal to or exceeding in amount the duty charged upon such article by this Act, then and in such case the duty charged upon such article by this Act shall not be demanded or paid upon the importation of such article: Provided also, that if the duty payable under such colonial law shall be less in amount than the duty payable by this Act, then and in such case the difference only in the amount of the duty payable by this Act, and the duty payable under the authority of such colonial law shall be deemed to be the duty payable by this Act, and the same shall be collected and paid in such and the like manner and appropriated and applied to such and the like uses as the duties specified in the said schedule annexed to this Act marked B. are directed to be collected paid appropriated and applied.

Duties not payable if the Articles are liable to a Colonial Duty equal in amount to the Duties hereby charged.

If Colonial Duty be less, the Difference only to be paid.

Duties Penalties and Forfeitures to be Sterling Money at a certain Rate.

XIV. And be it further enacted, That all sums of money granted and imposed by this Act either as duties penalties or forfeitures shall be deemed and are hereby declared to be sterling money of *Great Britain*, and shall be collected recovered and paid to the amount of the value which such nominal sums bear in *Great Britain*; and that such monies may be received and taken according to the proportion and value of five shillings and sixpence the ounce in silver.

Recovery and Application of Forfeitures.

XV. And be it further enacted, That all and every the goods or commodities and all ships or vessels forfeited by this Act shall and may be seized by the commander or commanders of any of his Majesty's ships or vessels of war, or any commissioned warrant or petty officer specially authorized by him or them, or by any officer or officers of his Majesty's customs; and that every forfeiture and penalty incurred by this Act shall and may respectively be sued for prosecuted and recovered in such courts and by such and the like ways means and methods, and the produce thereof respectively disposed of and applied in such and the like manner, and to such and the like uses and purposes as any forfeiture or penalty incurred by any law respecting the revenue of the customs may now be sued for prosecuted or recovered, disposed of and applied either in this kingdom or in any of his Majesty's dominions in *America* or the *West Indies* respectively as the case may happen to be.

General Issue.

XVI. And be it further enacted, That if any person or persons shall be sued or prosecuted for any thing done or to be done in pursuance of this Act, such person or persons may plead the general issue and give this Act and the special matter in evidence; and if the plaintiff or plaintiffs prosecutor or prosecutors shall become nonsuit or forbear the prosecution, or discontinue his her or their action, or if a verdict shall pass against him her or them the defendant shall have treble costs, and shall have the like remedy for the same as in cases where costs are by law given to defendants.

Treble Costs.

Schedules to which this Act refers.

(SCHEDULE A.)

A Schedule of Articles allowed to be exported from Ports in Europe or in Africa to any of his Majesty's Colonies Plantations or Islands in America or the West Indies.

Anchovies.
Argol.
Alabaster, rough and worked.
Anniseed.
Amber.
Almonds.
Biscuit.
Brandy.
Bullion.
Brimstone.
Boxwood.
Beans.
Botargo.
Cattle.
Currants.
Capers.
Cantharides.
Corn.
Cumminseed.
Coral.

Cork.
Cinnabar.
Cascasoo.
Caviar.
Dates.
Essence of Bergamot.
— of Citron.
— of Lemon.
— of Orange.
— of Lavender.
— of Roses.
— of Rosemary.
Emery Stone.
Flour.
Fruit.
— dry and wet, preserved in Brandy and Sugar, in Jars and Bottles.
Figs.
Garden Seeds.
Gum Arabic.
— Mastic.
— Myrrh.
— Sicily.
—. Ammoniac.
Grain.
Honey.
Jalap.
Incense.
Juniper Berries.
Lava and Malta Stone for Buildings.
Lentils.
Lumber.
Manna.
Mosaic Works.
Medals.
Meal.
Musk.
Marble, rough and worked.
Mill Timber.
Maccaroni.
Mules.
Nuts of all Kinds.
Oil of Olives.
— of Almonds.
Opium.
Orris Root.
Ostrich Feathers.
Ochres.
Orange Buds and Peel.
Olives.
Pickles, in Jars and Bottles.
Paintings and Prints.
Pozzolana.
Precious Stones.
Pearls.
Punck.
Pumice Stone.
Peas.
Parmesan Cheese.
Quicksilver.
Raisins.
Rhubarb.
Rice.
Salt.
Sausages.
Senna.
Scammony.
Sarsaparilla.
Saffron.
Safflower.
Shingles.
Sponges.
Staves.
Sheep.
Vermillion.
Vermicelli.
Whetstones.
Wine.
Wood Hoops.

SCHEDULE (B.)

A Schedule of Duties payable on Articles imported into his Majesty's Colonies, Plantations, or Islands in America or the West Indies, from Ports in Europe or Africa, under the Authority of this Act.

		£	s.	d.
Wine, imported in Bottles, viz.				
—— French Wine - - -	the Tun of 252 Gallons	10	10	0
—— Madeira Wine - - -	the Tun of 252 Gallons	7	7	0
—— Portugal Wine - - -	the Tun of 252 Gallons	7	7	0
—— Rhenish, Germany and Hungary Wine - -	the Tun of 252 Gallons	9	9	0
—— Spanish Wine, and Wine not otherwise enumerated	the Tun of 252 Gallons	7	7	0
—— And in addition to the specified Duties hereby imposed upon such Wines respectively, a further Duty for every 100*l.* of the true and real Value thereof - -		7	10	0
—— And for every Dozen of Foreign Quart Bottles, in which such Wine may be imported - - -		0	8	0

		£.	s.	d.
No. CXIII. 3 Geo. IV. c. 45.	Corn, Flour, Grain, Meal, Peas, Beans — For every 100*l.* of the true and real Value thereof	12	0	0
	Headings — for every 1,000	1	1	0
	Lumber, viz. Yellow or White Pine — per 1,000 Feet	1	1	0
	——— all other Descriptions	1	8	0
	Mill Timber, the like	10	0	0
	Shingles, for every 1,000, not exceeding 12 Inches in Length	0	7	0
	——— for every 1,000, exceeding 12 Inches	0	14	0
	Staves, Oak, Red or White — for every 1,000	1	1	0
	Wood Hoops — for every 1,000	0	5	3
	Alabaster, Anchovies, Argol, Anniseed, Amber, Almonds, Brandy, Brimstone, Botargo, Boxwood, Currants, Capers, Cascasoo, Cantharides, Cumminseed, Coral, Cork, Cinnabar, Dates, Essence of Bergamot, ——— of Lemon, ——— of Roses, ——— of Citron, ——— of Orange, ——— of Lavender, ——— of Rosemary, Emery Stone, Fruit, viz. —— dry, and preserved in Sugar, —— wet, preserved in Brandy, Figs, Gum Arabic, —— Mastic, —— Myrrh, —— Sicily, —— Ammoniac, Honey, Jalap, Juniper Berries, Incense of Frankincense, Lava and Malta Stone, for building, Lentils, Manna, Marble, rough and worked, Mosaic Work, Medals — For every 100*l.* of the true and real Value thereof	7	10	0

		£. s. d.
Musks Maccaroni Nuts of all Kinds Oil of Olives — of Almonds Opium Orris Root Ostrich Feathers Ochres Orange Buds and Peel Olives Pickles in Jars and Bottles Paintings Pozzolana Pumice Stone Punk Parmesan Ceeese Pickles Prints Pearls Precious Stones (except Diamonds) Quicksilver Raisins Rhubarb Rice Sausages Senna Scammony Sarsaparilla Saffron Safflower Sponges Vermillion Vermicelli Wine, not in Bottles, except Wine imported into Newfoundland Whetstones	For every 100*l.* of the true and real Value thereof	7 10 0

PART III.

CLASS III.

Insurance.

[No. I.] 43 Elizabeth, c. 12.—An Act concerning Matters of Assurances used among Merchants.

43 Eliz. c. 12. The Benefit ensuing by the Encouragement of Merchants, 3 Inst. 165. Stiles, 166.

'WHEREAS it ever hath been the policy of this realm by all good means to comfort and encourage the merchant, thereby to advance and increase the general wealth of the realm, her Majesty's customs and the strength of shipping; which consideration is now the more requisite because trade and traffic is not at this present so open as at other times it hath been: And whereas it hath been time out of mind an usage amongst merchants both of this realm and of foreign nations when they make any great adventure, (especially into remote parts) to give some consideration of money to other persons (which commonly are in no small number) to have from them assurance made of their goods merchandizes ships and things adventured, or some part thereof, at such rates and in such sort as the parties assurers and the parties assured can agree, which course of dealing is commonly termed a policy of assurance; by means of which policies of assurance it cometh to pass upon the loss or perishing of any ship there followeth not the undoing of any man, but the loss lighteth rather easily upon many than heavily upon few, and rather upon them that adventure not than those that do adventure, whereby all merchants especially of the younger sort are allured to venture more willingly and more freely: And whereas heretofore such assurers have used to stand so justly and precisely upon their credits as few or no controversies have arisen thereupon, and if any have grown the same have from time to time been ended and ordered by certain grave and discreet merchants appointed by the Lord Mayor of the city of *London* as men by reason of their experience fittest to understand and speedily to decide those causes, until of late years that divers persons have withdrawn themselves from that arbitrary course and have sought to draw the parties assured to seek their monies of every several assurer by suits commenced in her Majesty's courts to their great charges and delays:' For remedy whereof be it enacted by the authority of this present Parliament,

A Policy of Assurance and the Benefit coming thereby.

Commissions awarded to hear and determine touching Policies of Assurances.

That it shall and may be lawful for the Lord Chancellor or Lord Keeper of the great seal of *England* for the time being to award forth under the great seal of *England* one general or standing commission to be renewed yearly at the least and otherwise so oft as unto the said Lord Chancellor or Lord Keeper shall seem good for the hearing and determining of causes arising and policies of assurances such as now are or hereafter shall be entered within the office of assurances within the city of *London*, and whereof no suit shall be depending the last day of this session of Parliament in any of her Majesty's courts: which commission shall be directed to the Judge of the Admiralty for the time being the Recorder of *London* for the time being two doctors of the civil law and two common lawyers and eight grave and discreet merchants or to any five of them: which commissioners or the greater part of them which shall sit and meet shall have by virtue of this present Act full power and authority to hear examine order and decree all and every such cause and causes

Who shall be Commissioners. 1 Shew. 396.

No. I. 43 Eliz. c. 12.

concerning policies of assurances in a brief and summary course as to their discretion shall seem meet without formalities of pleadings or proceedings.

The Commissioners authority.

II. And be it further enacted by the authority aforesaid, That it shall be lawful for the said commissioners as well to warn any of the parties to come before them as also to examine upon oath any witness that shall be produced and to commit to prison without bail or mainprize any person that shall wilfully contemn or disobey their final orders or decrees: and that the said commissioners shall once every week at the least meet and sit upon the execution of the said commission in the office of the assurances or in some other convenient publick place by them to be assigned: and that no person by virtue of this Act may claim or exact any fee for any matter or cause concerning the execution of the said commission.

A Remedy for the Party grieved by the Commissioners Decree.

III. And be it further enacted by the authority aforesaid, That if any person shall be grieved by sentence or decree of the said commissioners that such persons so grieved may at any time within two months of the said decree so made exhibit his bill into the High Court of Chancery for the re-examination of such decree; so as every person complainant, before he shall exhibit any such bill do either execute and satisfy the said sentence so awarded, or at the least lay down *in deposito* with the said commissioners such sums of money as he shall be awarded to pay, and that upon so doing the said complainant shall be enlarged of his imprisonment: and that the Lord Chancellor or Lord Keeper for the time being shall have full power and authority by virtue of this Act upon every complaint made (in order as aforesaid) to reverse or affirm every such sentence or decree according to equity and conscience: And that the said Lord Chancellor or Lord Keeper in every such suit brought before him as aforesaid by such assurers and decreed against the said assurers shall award double costs to the party assured.

No Assurer or Assured shall meddle in the Commission. Every Commissioner may act, having taken an Oath before the Lord Mayor.

IV. Provided nevertheless, That no commissioner shall intermeddle in the execution of any such commission in any cause or matter of assurance where himself shall be either a party assurer or assured in the same assurance which is brought in question: nor that any commissioner (other than the said Judge of the Admiralty and the Recorder of *London*) shall deal or proceed in the execution of any such commission before he have taken his corporal oath before the lord mayor and court of aldermen of the city of *London* to proceed uprightly and indifferently between party and party.

[No. II.] 13 & 14 Charles II. c. 23.—An additional Act concerning Matter of Assurance used amongst Merchants.

13 & 14 Car. II. c. 23. 43 Eliz. c. 12.

'WHEREAS by an Act of Parliament made in the three-and-fortieth 'year of the reign of Queen *Elizabeth* of happy memory, intituled, '*An Act concerning Matters of Assurances used amongst Merchants;* the 'Parliament then taking into consideration by all good means to com-'fort and encourage the merchants of this kingdom, thereby to advance 'and increase the wealth of this realm, her Majesty's customs and the 'strength of shipping, and for preventing of divers mischiefs in the said 'Act mentioned; it was enacted, That it should and might be lawful for 'the Lord Chancellor or Lord Keeper of the great seal of *England* for the 'time being to award forth under the great seal of *England* one general 'or standing commission to be renewed yearly at the least, and other-'wise so often as unto the Lord Chancellor or Lord Keeper should seem 'meet for the hearing and determining of causes arising on policies of 'assurance such as then were, or then after should be entered within the 'office of assurance of the city of *London*, which commission should be 'directed to the Judge of the Admiralty for the time being the Recorder 'of *London* for the time being two doctors of the civil law two com-'mon lawyers and eight grave or discreet merchants or any five of 'them; which commissioners or the greater part of them which should

Encouragement of Merchants and Trade.

No. II. 13 & 14 Car. II. c. 23.

'sit and meet should have full power and authority to hear examine 'order and decree all and every such cause or causes in a brief and sum- 'mary course, without formalities of pleadings or proceedings, with 'power to warn parties to come before them and to examine upon oath 'any witnesses that should be produced and to commit to prison any 'person that should wilfully disobey their final orders and decrees; and 'the commissioners to sit once weekly upon the execution of the said 'commission with a liberty in the said Act for any person grieved by any 'such sentence or degree to exhibit his bill in chancery for the re- 'examination of such sentence or decree as by the said Act, relation 'being thereunto had, more at large may appear: But forasmuch as by 'the said recited Act without five commissioners there cannot be a 'court, and without there be a court they cannot proceed in the execu- 'tion of their commission so much as to summon parties or witnesses to 'appear; and in case of neglect or refusal of any party or witness to ap- 'pear they have no power to punish the delay or contempt with costs or 'otherwise; and it is provided by the said Act, That not any commis- 'sioner other than the Judge of the Admiralty or the Recorder of *London* 'shall proceed in the execution of such commission before he hath taken 'his oath before the lord mayor and court of aldermen to proceed up- 'rightly and indifferently between party and party, which upon the 'renewing of the said commissioners often proves a great delay, there 'being so many commissioners to be sworn and the court of alderman 'not sitting at some times in the year when the said commissions have 'happened to be renewed: and although the said commissioners upon 'their final sentence have power to commit to prison any person 'that shall wilfully disobey their said sentences or decrees, yet they have 'no power to make any order against the ship or goods which commonly 'are the things assured; by which omissions for want of power given by 'the said Act the benefits intended by the said Act of Parliament are 'much retarded, and the mischiefs by the Act endeavoured to be pre- 'vented much increased:'

Three Commissioners empowered to act.

II. For remedy whereof be it enacted and ordained, and it is hereby enacted and ordained by the King's most excellent Majesty, and by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, That from and after the four-and-twentieth day of *June*, which shall be in the year of our Lord one thousand six hundred sixty and two, it shall and may be lawful to and for the Lord Chancellor or Lord Keeper of the great seal of *England* for the time being to issue out yearly (or oftener if need require) one standing commission under the great seal of *England*, thereby empowering and authorizing the said commissioners or any three of them (whereof a doctor of the civil law, or a barrister at law of five years standing at the least to be always one), to meet and sit and make a court and proceed in all things in the execution of the said commission as before by the said Act any five might have done; and that the said commissioners or any such three of them as aforesaid be and hereby are empowered to summon parties and witnesses to appear; and in case of contempt or wilful delay in the witnesses upon the first summons and tender of reasonable charges, and in the parties upon their second summons, to punish the offenders by imprisonment or costs for such time and in such manner as shall be reasonable and according to the nature and quality of their offences; and that it shall and may be lawful to and for every such commissioner to proceed in the execution of the said commission, having first taken an oath before the lord mayor of the city of *London* for the time being only, to proceed uprightly and indifferently between party and party; and the said lord mayor is hereby authorized to give such oath; any thing in the said Act to the contrary notwithstanding: and that no person shall proceed in the execution of the said commission before he be first sworn before the lord mayor of *London* for the time being to proceed uprightly and indifferently between party and party as formerly he should have been before the lord mayor and court of aldermen.

1 Shower, 396.

Costs.

Lord Mayor of London may administer the Oath.

No. II. 13 & 14 Car. II. c. 23.

III. Be it also enacted by the authority aforesaid, That in case the said commissioners or any such three of them as aforesaid shall find cause to examine witnesses beyond the seas, or any remote parts of his Majesty's dominions, for the clearing of any doubt or matter before them depending, that in such case by direction of the said commissioners or any such three of them like commissions or process shall issue out of the Court of Admiralty as have formerly been for the purposes aforesaid, returnable before the said commissioners; and that the said commissioners or any such three of them shall have also power to give and pass their final sentence decree and executions as well against the body of the party evicted or his goods as also against the executors and administrators of such party so evicted; and to assess costs of suit upon such person or persons as shall be condemned by the decree of the said court as to them shall seem just.

Commissions out of the Admiralty Court to examine Witnesses beyond Sea.

'IV. And forasmuch as many witnesses (as seamen and others) come 'and speedily go again to sea before a court can be summoned, by which 'means the assured and assurers are many times much damnified;' For the preventing of which mischief, Be it also enacted by the Authority aforesaid, That it shall and may be lawful to and for any one of the said commissioners to administer an oath to any witness legally summoned to give testimony, (timely notice being thereof given to the adverse party and set up in the office before such examination,) to the end that such witness or witnesses may be cross-examined.

Witnesses going to Sea how to be examined before.

V. Provided always, That the said commissioners shall in no case proceed both against person and goods for one and the same debt; and provided also, that any thing in this Act contained shall not in any wise extend to prejudice the appeal to the High Court of Chancery given or allowed in the said former Act of Parliament. *

Appeal to the Chancery. 43 Eliz. c. 12.

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* The following observations are made by Mr. Justice Park, on the Court, which is the subject of this and the preceding Number, in his valuable Treatise on the Law of Insurance. Speaking of the statute of Elizabeth, he says, that "the purpose of that Statute was to erect a particular Court for the trial of causes relative to Policies of Insurance, in a summary way; and to that end the Statute ordained, that a Commission should issue yearly, directed to the Judge of the Admiralty, the Recorder of London, two Doctors of the Civil Law, two common Lawyers, and eight Merchants, empowering any five of them to hear and determine all such causes arising in London; and it also gave an appeal from their decision, by way of Bill, to the Court of Chancery. But this Statute not entirely answering the intention of the Legislature, some further regulations were made by a subsequent Statute: such as the reduction of the number necessary to constitute a quorum. I forbear entering at length into this matter, the Court erected by these Statutes being now entirely disused. The reasons of this may be collected from some few decisions in our Reporters: but one appears on the face of the Statute itself, namely, that its jurisdiction was not sufficiently extensive, being confined to such causes only *as arose in London*.

"By a case reported in Style we find, that a prohibition issued to the Court of Policies of Insurance, to prevent it from proceeding in a case of insurance upon a life, the Court of King's Bench being of opinion, that the Statute only meant to give the Court below cognisance of *such contracts* only as related to *Merchandize*.

"In another case it seemed to be the opinion of the Court of King's Bench, that the jurisdiction of this newly-erected court did not extend to suits brought by the assurer against the assured; but only to such as were prosecuted by the latter against the former. It is true, in Sir Bartholomew Shower's note of the case, no decision appears to have been made; but a rule to shew cause why a prohibition should not issue, was obtained; and no notice is afterwards taken of it, although the learned Reporter was himself the Counsel in the cause, who had obtained the original rule.

"But a case reported in Siderfin, seems to have struck a more severe blow at the existence of this court than any of those cases I have mentioned; for it was there held, that it was no bar to an action upon a Policy of Insurance at the common law to say, that the plaintiff had sued the defendant for the same cause, in the Court erected by the Statute of Elizabeth, and that his suit was there dismissed.

"These causes co-operating, together probably with some instances of partiality in the Judges, this Court fell into disuse, no commission having issued for many years; but Insurance causes are now decided, like all other questions of property, and by that mode of trial most agreeable to the nature of our Constitution, by a trial in a Court of common law.

"It has been much the fashion of late years to insist upon the advantages which the trading part of the nation would derive from the establishment of some equitable and amicable judicatory for the trial of all disputed points in matters of Insurance. This is only another proof of the weakness and fallibility of the human mind, which is never satisfied with things within its reach, however

excellent they may be; but pants after those of foreign growth. Thus, a people who are possessed of a species of trial, the best calculated for the discovery of truth and the advancement of justice, and which has excited the admiration of the world, are desirous of parting with such an advantage for a mode of trial which is very unsatisfactory.

"The Court erected by the Statute of Elizabeth, and which has now fallen into disuse, is perhaps one of the strongest arguments that can be adduced to prove that such a judicature is not congenial to the spirit and disposition of Britons, nor well adapted for the purposes of its institution. It is universally agreed by all writers upon jurisprudence, that nothing tends so much to the elucidation of truth and the detection of fraud, as the open *viva voce* examination of witnesses, in the presence of all mankind; before judges who from their knowledge of books and men, acquired by long study and experience, are well qualified to discriminate and decide between right and wrong; and before twelve upright citizens, who have an opportunity of observing the appearance, countenance, inclination, and deportment of those who are thus examined upon oath. Besides the subjects of those states, which have established these equitable tribunals, sensible of the superior advantages of the English institution, feeling that in great mercantile questions, the greatest attention is paid to the eternal and immutable principles of reason, and that all men, whether natives or foreigners, here meet with an equal measure in the administration of justice, fly to this country to make their contracts of Insurance, that in case of a dispute they may have the benefit of its laws."

Fully concurring with the learned writer, in his veneration of the justice and wisdom of the existing law, I entertain a very different impression with respect to the benefit of reviving, under proper modifications, an Institution similar in its principles to that which is the subject of his animadversions. Unquestionable and unquestioned as the rectitude and justice of the decisions of our existing tribunals assuredly are, it cannot be denied, that in the previous machinery of litigation there is a very great opportunity for the operation of chicanery and vexation; and although, doubtless, the great bulk of the transactions upon Policies of Insurance, like the great body of all the other intercourse of society, passes *sub silentio*, and according to the ordinary principles of rectitude and propriety, there is no class of cases, and I shall have occasion, more than once, to recur to the observation, that comes under the publick examination of Courts of Judicature, (from which alone I derive my knowledge of the subject,) that presents so many instances of contest, in opposition to the plain and manifest dictates of common integrity—or that could justify, in so great a degree, the kind of animadversion with which, in the Statute of Elizabeth, the subject is introduced.

The advantage possessed by the assurers, of defending the claim against them, collectively or individually, is, in the hands of persons acting with fraudulent intentions, a powerful weapon of oppression; and, as such, I conceive is not unfrequently made use of.

That the settlement of general questions of law is most advantageously referred to the publick tribunals of the country—and, that the decision of disputed questions of fact is best referred to an open examination, before an impartial jury, are propositions to which I unreservedly accede; but a party, in resisting a fair demand, has a great opportunity of harassing his opponent, by requiring the strict and technical proof of circumstances, the existence of which is not susceptible of any real controversy, and the insisting upon a formal proof of which is of no other service than that of intimidation on account of the expence—and supposing the tribunal in question to be again resorted to, the beneficial objects of the Institution would be best accomplished by a course of procedure, upon which specific issues might be directed for the trial of any fairly disputed fact, and statements of the case might be submitted to the judgments of the regular tribunals of the country, upon any disputed question of law, with suitable provisions for making the determination subject to revision upon appeal, as effectually as can be done according to the existing course and practice of the law, and which is abundantly exemplified by the present course of appeal from the decisions of Courts of Equity, and the Courts of Scotland.

The powers which may be given to a tribunal, constituted as the ancient Court of Policies of Assurance was to give specific directions operating *in rem.* to institute inquiries under a proper superintendence upon matters, the elucidation of which may be material to attain the proper justice of the case, and to make a general arrangement between conflicting parties upon questions of average and contribution would afford advantages to such a tribunal, to which there is nothing analogous in the ordinary course of legal proceedings. The inadequacy of the existing law to settle *proprio vigore* complicated questions of average and contribution is very manifest and notorious. Such questions are by consent as matter of course, and from conviction of counsel that justice cannot be attained in any other way, referred to private examination; but a law can hardly be considered as perfect which is not possessed of adequate powers within itself to complete its purpose, and which requires the extrinsic aid of personal consent.

Although these observations refer to a course of procedure which has been long obsolete, there is nothing in the principle of the measure which can be regarded as rash or experimental. The powers exercised by commissioners, under local Acts and Acts of Revenue, are as great and extensive as any judicial power, which it would be convenient to refer in a Court to be instituted or revived for the purposes alluded to. The judicature exercised by the Lord Chancellor in bankruptcy, (wherein the facts, which are the subject of inquiry, are primarily examined upon affidavit, and the questions, the nature of which may render it expedient, are referred to the decision

of a jury upon the fact, or to the opinion of one of the ordinary Courts upon a point of law, while other matters are, with greater convenience, referred to the officers of the Court, or commissioners,) may supply every thing which can be considered in point of model or principle, and probably embrace a mass of property not much inferior in amount to the whole of the property connected with commercial transaction, which is brought under examination before the Courts of Law.

Amongst the causes which may have been most essential in producing the decline of the Court referred to, there is one not noticed in the preceding extract, which may probably have had a greater effect than those enumerated—the want of compensation to the persons to whom the authority is intrusted; and the observation is not made ludicrously, but with the conviction, that in very few instances gratuitous services can be relied upon, or reasonably expected upon a great and extensive scale; and that the most effectual mode of obtaining a desirable object is to connect with it such a compensation as may afford an adequate inducement for the exertions of those who would be most beneficially interested in its accomplishment.

The preceding observations, considering the existing state of public opinion, may, I am aware, be regarded as purely speculative; but when I recollect the great increase which, within the time of my own memory, has taken place in the matters of inquiry submitted to Courts of Justice, and the number of arrangements and expedients which have been resorted to for dispatch of it, and contemplate the probability of a similar increase with the further progress of population and national wealth, I anticipate, as a consequence, the arrival of the period when it will be beyond the power of mere arrangement, with all possible exertion of assiduity and ability, to meet the exigencies of publick justice with the existing judicial establishment, and when there must be either that general confusion and delay, than which nothing could be more extensively detrimental, or an alteration of system calculated to meet the increased demand for judicial labour, with an adequate addition of supply; and perhaps when the time arrives that the necessity of resorting to such expedients shall force itself upon the attention, the revival of the Court of Policies of Assurance may be found an object not entirely unworthy of regard.

[No. III.] 6 George I. c. 18.—An Act for better securing certain Powers and Privileges intended to be granted by his Majesty by two Charters for Assurance of Ships and Merchandizes at Sea, and for lending Money upon Bottomry; and for restraining several extravagant and unwarrantable Practices therein mentioned. P.

6 Geo. I. c. 18.

By 14 Geo. 2. c. 37. this Act is extended to America.

43 Eliz. c. 12.

13 & 14 Car. 2. c. 23.

'MOST Gracious Sovereign; Whereas it hath for many ages past been esteemed good policy by all proper ways and means to secure and encourage the trade of this realm, whereby the wealth and strength of the same and particularly the shipping navigation and publick revenues thereof have been increased; and it hath been time out of mind a custom or usage amongst merchants as well of this realm as of foreign nations, when they make any adventures at sea (especially into remote or dangerous parts) to give a premium or consideration to particular persons to have from such particular persons assurance of or upon ships goods or merchandizes adventured or some of them, at such rates or prices as the parties assurers and the parties assured can agree, which kind of contract or dealing is commonly called a policy of assurance, and several laws and statutes now in force have been made concerning the same assurances; notwithstanding which it is found by experience that many particular persons after they have received large premiums or consideration-monies for or towards the insuring ships goods and merchandizes at sea have become bankrupts, or otherwise failed in answering or complying with their policies of assurance whereby they were particularly engaged to make good or contribute towards the losses which merchants or traders have sustained, to the ruin or impoverishment of many merchants and traders and to the discouragement of adventurers at sea and to the great diminution of the trade wealth strength and publick revenues of this kingdom: And whereas it is conceived that if two several and distinct corporations with a competent joint stock to each of them belonging and under proper conditions restrictions and regulations were erected and established for assurance of ships goods or merchandizes at sea or going to sea (exclusive of all or

No. III. 6 Geo. I. c. 18.

'any other corporations or bodies politick already created or hereafter to 'be created, and likewise exclusive of such societies or partnerships as 'now are or may hereafter be entered into for that purpose) several mer-'chants or traders who adventure their estates or part of their estates 'in such ships goods or merchandizes at sea or going to sea (especially 'in remote or hazardous voyages) would think it much safer for them to 'depend on the policies or assurances of either of those two corporations 'so to be erected and established than on the policies or assurances of 'private or particular persons; and that such merchants or adventurers 'as shall hereafter be minded to agree for assurance of their ships goods 'or merchandizes with private or particular persons may still be at 'liberty so to do according to their own option or choice: and whereas 'it has also been a custom or usage in this as well as in other nations for 'merchants or traders who adventure their ships and merchandizes at 'sea to borrow money to be repaid upon the return or arrival of such 'ships, which kind of borrowing is commonly called taking up money on 'bottomry; in which cases the lenders run a risque or hazard more or 'less of losing their principal, and are therefore allowed to contract for 'such interest or consideration-money for the use or forbearance of the 'principal as can be agreed upon between the borrowers and the lenders; 'and it is considered, that it may be a great advantage and encourage-'ment to trade and navigation if such merchants and traders might have 'it in their power at their own election either to have recourse to one of 'the corporations to be erected and established in pursuance of this Act, 'or to private or particular persons for borrowing money upon bottomry 'as aforesaid, at such rate or rates as shall be agreed upon between such 'borrowers and lenders respectively: And whereas the sole right and 'prerogative of granting charters of incorporation (not being such as are 'repugnant to any law or statute of this realm) doth belong to your Ma-'jesty; and it is considered, that if your Majesty shall be graciously 'pleased to grant two such distinct charters as aforesaid, the members 'of each corporation so to be erected and established (for and in consi-'deration of the advantages which may accrue to them respectively 'thereby and for having reasonable powers and privileges secured to them 'in pursuance of this Act) may be willing to pay to your Majesty's use 'such sums of money at such times and by such proportions as are 'herein-after mentioned:' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful to and for his Majesty, by one charter or indenture under the great seal of *Great Britain*, to declare and grant, That such and so many persons (who shall be named therein and of whose abilities and fitness his Majesty shall thereby declare himself to be well satisfied) and all and every such other person or persons as hereafter from time to time shall be duly admitted as members into their corporation, shall be one distinct and separate body politick and corporate for the assurance of ships goods and merchandizes at sea or going to sea and for lending money upon bottomry, by such name as his Majesty shall think most proper; and that it shall and may be lawful to and for his Majesty by another charter or indenture under the Great Seal of *Great Britain* to declare and grant, That such and so many other persons (who shall be named therein and of whose abilities and fitness his Majesty shall thereby declare himself to be well satisfied) and all and every such other person and persons as hereafter from time to time shall be duly admitted as members into their corporation shall be one other distinct and separate body politick and corporate for assurance of ships goods and merchandizes at sea or going to sea and for lending money upon bottomry, by such name as his Majesty also shall think most proper; and that the said several and respective corporations by their respective names aforesaid shall have perpetual succession, subject nevertheless to such redemption or power of revocation as hereafter in this Act is provided concerning the same.

His Majesty may grant Charters to two distinct Companies for Assurance of Ships, and for lending Money on Bottomry.

to have perpetual Succession, but subject to Redemption.

[They may choose their own governors, &c. The first governor, &c.

No. III. 6 Geo. I. c. 18.

to be appointed by his Majesty. To continue in their places for three years, &c. To have a common seal. May purchase lands to the value of 1000*l.* per annum. May sue or be sued.]

II. [Each of the corporations to pay into the Exchequer 800,000*l.* for discharging the debts of the Civil List. 7 Geo. 1. c. 27. sect. 26. Times of payment.]

III. [On failure of payment at the times of payment corporation may be sued. Ten per cent. Damages with full costs of suit. On non-payment for thirty days, corporation may be determined.]

IV. [Each corporation to provide a sufficient stock to answer all demands on their policies. On neglect may be sued, &c. For pleas in such actions, 11 Geo. I. c. 30. sec. 43. Altered as to double damages by 8 Geo. I. c. 15. sec. 25.]

V. [Each corporation to raise a capital stock not exceeding 1,500,000*l.*]

VI. [All subscribers entitled to a share in the capital stock.]

VII. [Corporation may make calls of money from their members in proportion to their stocks. Penalty for not answering to calls.]

VIII. [Each corporation may take up money under their common seal to advance money on Parliamentary securities. Not chargeable with the stamp duty.]

IX. [Shares in the corporations transferable and deviseable. Stock a personal estate, and to go to executors.]

X. [Stock not to be taxed. Governors, &c. may be Members of Parliament, &c.]

XI. [His Majesty may empower them by charter to make by-laws, &c.]

During the two Corporations no other Societies may assure Ships or lend Money on Bottomry.

XII. And be it further enacted by the authority aforesaid, That from and after the granting or making of the said respective charters or indentures for erecting the two corporations before-mentioned and passing the same under the great seal for and during the continuance of the same corporations respectively or either of them, all other corporations or bodies politick before this time erected or established, or hereafter to be erected or established, whether such corporations or bodies politick or any of them be sole or aggregate, and all such societies and partnerships as now are or hereafter shall or may be entered into by any person or persons for assuring ships or merchandizes at sea, or for lending money upon bottomry, shall by force and virtue of this Act be restrained from granting signing or underwriting any policy or policies of assurance or making any contracts for assurance of or upon any ship or ships goods or merchandizes at sea or going to sea, and from lending any monies by way of bottomry as aforesaid; and if any corporation or body politick or persons acting in such society or partnership (other than the two corporations intended to be established by this Act or one of them) shall presume to grant sign or underwrite after the four-and-twentieth day of *June* one thousand seven hundred and twenty any such policy or policies or make any such contract or contracts for assurance of or upon any ship or ships goods or merchandizes at sea or going to sea or take or agree to take any premium or other reward for such policy or policies, every such policy and policies of assurance of or upon any such ship or ships goods or merchandizes shall be *ipso facto* void, (1.) and all and

Penalty for Corporations assuring.

(1.) In Lees *v.* Smith, 7 T. R. 338. where several persons mutually agreed to insure the vessels of each other, and there was a clause, that in case any of them should become insolvent the others should be answerable for his proportion, this mutual security was held to constitute a partnership, and to bring the agreement within the reach of the prohibition. I doubt whether the reasoning in this case was altogether correct; for although a joint and mutual liability necessarily attaches upon and results from a copartnership, it does not follow that it necessarily constitutes one; or, that as there can be no partnership without a joint responsibility, there can be no joint responsibility without a partnership. Upon the case in question, it would not have been sufficient (supposing the statute out of the question) to have sued a contributor, as a partner primarily liable in respect of the original engagement, but would have been essentially requisite to have proceeded upon the special contract, with an express averment of the insolvency of the particular insurer, for whose deficiency the others were respectively liable to contribute.

In Cockburn *v.* Thompson, 16 Ves. 328. it was said by Lord Eldon, *arguendo*, that any number of persons may associate for the insurance of each other; all in effect participating as a partnership. Where a partnership was entered into, in contravention of the statute, it was ruled, that one of

No. III. 6 Geo. I. c. 18.

every sum or sums so signed or underwritten in such policy or policies shall be forfeited and shall and may be recovered, to wit, one moiety thereof to the use of his Majesty his heirs and successors, and the other moiety thereof to the use of such person or persons as will inform or sue for the same in any of his Majesty's Courts of Record at *Westminster*, in

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the partners had no claim upon the other for a proportion of the losses which he had paid.—Mitchell *v.* Cockburne, 2 H. Black. 379. Where three persons were in partnership, and the policies were in the name of one of them, and another, together with a partner of his own, (to which partnership there is no legal objection,) were the brokers, the assignees of the person whose name was used were not allowed to recover from those brokers the premiums received. Booth *v.* Hodgson, 6 T. R. 405. It had been previously held by Lord Kenyon, at *Nisi Prius*, that an underwriter, who had paid a loss, could not recover from the broker the money which the broker had received from another person, who had agreed to take half the plaintiff's risque, his Lordship saying, that a party could not appeal to a court of justice to enforce a contract founded upon a breach of the law—Sullivan *v.* Greaves, Park, 8; but it has been since ruled by the Court of Common Pleas, that a broker, to whom the underwriter had paid the loss on an illegal policy, could not resist paying it over to the assured—and they even refused to grant a rule to shew cause why there should not be a new trial; which decision certainly cannot, in principle, be reconciled to that before Lord Kenyon. These cases had occurred previously to the appearance of a small tract on insurance, which I published in the year 1801; in which I submitted some observations on the correctness of the principles which were adopted in Booth and Hodgson, and Sullivan and Greaves. The observations were afterwards ingrafted into a general discussion on the illegality of contracts, which I introduced into the Appendix to the Translation of Pothier—and which I have thought it eligible to add to the present work, (see Appendix, No. I.)

In Aubert *v.* Maze, 2 Bos. & Pul. 371. an award that the defendant should pay the plaintiff a certain sum, being a moiety of divers sums of money paid by the defendant, on account of policies underwritten at their joint risk, was set aside. This decision appears fully to accord with what I apprehend to be the true legal principles upon the subject—there being no other obligation subsisting between the parties than the illegal contract of partnership. But in the discussion of the case many sentiments were advanced in contradiction of those, which I have repeatedly endeavoured to maintain, as illustrated by the great cases of Faikney *v.* Reynons, and Petrie *v.* Hannay, with regard to the collateral extension of the consequences of illegal contracts, as to which see the Number of the Appendix above referred to. Lord Eldon said, that if the principle of these cases was to be supported, the Act of Parliament would be of very little use—meaning, of course, "*Effect and operation*,"—for as to the real use of the Act of Parliament, except by way of sale of a monopoly to the chartered companies, it would perhaps be rather difficult to discover in what circumstance it can be found. But maintaining, as steadily as any man, the propriety of a strict conformity to the authority of the legislature, even upon subjects where I should not be disposed to join in admiration of its wisdom, I think that the consequence supposed would by no means follow—if, as in the cases of Faikney *v.* Reynons, and Petrie *v.* Hannay, the party protected from payment by means of the illegality of his interest, and who had subsequently prevailed upon another person to advance his money in execution of it, is merely held bound by such subsequent act. The joint object of the Act was t secure the companies from the competition of other bodies pledging the responsibility of a common fund. Such competition is completely and effectually excluded, to all legal purposes, by the mere operation of the Act; whereby any such insurance is absolutely void, and any partnership founded in contravention of the prohibition can produce no legal obligation. The decisions in Faikney *v.* Reynons, and Petrie *v.* Hannay, do not in the slightest degree contravene that principle, and only acknowledge the subsistence of an obligation arising from the subsequent act, occurring at a time when no illegal object is in contemplation, whereby a third person is induced to advance his property—upon the request and promise of the party intended to be charged—and is protected from loss—by precluding the defendant from alleging, that he was not liable at the time of the advance to pay the demand, in satisfaction of which he had requested such property to be applied—it being admitted, by those who are most strenuous in denying such obligation, that if the defendant had received the money upon a loan to himself, with the acknowledged view of applying it to such a purpose, it would have been an obligatory contract; and that the only difference is between the circuity of the money being borrowed by and handed to A, and by him paid over to B, and its being paid to B in in the first instance, without its passing through the hands of A.

In Brunton *v.* Taddy, 1 Taunt. 6. upon an action for premiums of insurance, the Defendant proved an agreement between the plaintiff and third persons, that the profits upon the policies underwritten by the Plaintiff should be divided between them—whereupon the plaintiff was nonsuited. Upon an application to set aside the nonsuit, Mansfield, C. J. said, "The law says, that no persons, acting in partnership, shall presume to underwrite any policy for assuring ships or merchandize at sea, but that every such policy shall be *ipso facto* void. How then can an action be maintained to recover these premiums? The statute would be mere waste paper, if one of several partners might underwrite a policy for the rest,"—and "the other judges concurring, the plaintiff took nothing by his motion." If the

No. III.
6 Geo. I. c. 18.

which action suit or information, no essoign protection privilege wager of law or more than one imparlance shall be granted or allowed: and if any corporation or body politick or persons acting in such society or partnership as aforesaid, other than the two corporations intended to be established by this Act or one of them, shall presume to lend or agree to lend or advance by themselves or any others on their behalf, after the said four-and-twentieth day of *June* one thousand seven hundred and twenty, any money by way of bottomry as aforesaid contrary to this Act, the bond or other security for the same shall be *ipso facto* void, and such agreement shall be adjudged to be an usurious contract and the offenders therein shall suffer as in cases of usury: Nevertheless it is intended and hereby declared, That any private or particular person or persons shall be at liberty to write or underwrite any policies or engage himself or herself in any assurances of for or upon any ship or ships goods or merchandizes at sea

Penalty for lending Money on Bottomry.

But any private Persons may assure, &c.

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defendant, at the time of effecting the policy, understood and knew that it was on the joint account of the plaintiff and the person with whom he was engaged in an illegal partnership—this clause is the mere result of the clear and undisputed rules of law—the policy would have been void—the defendant could have recovered nothing in case of loss—the plaintiff would have had no legal pretext to demand the premiums. But that fact does not appear, and is not made an ingredient in the case. Mr. Selwyn, in referring to the cases of Mitchell *v.* Cockburne, Sullivan *v.* Greaves, and Booth *v.* Hodgson, says, that it appears to have been the opinion of two eminent judges, (Eyre, C. J. and Lord Kenyon,) in those cases, that when a single name appears upon the policy, the insurer will not be allowed, if a loss happening to defeat a *bona fide* insurance, by alleging to an innocent person that there was a secret partnership between himself and another. To be sure, it would be the height of injustice if the law were otherwise—and the fair question upon the statement of Brunton *v.* Taddy is, whether one of these innocents, who would have had a legal claim to indemnity in case of loss, was justified, (not in common honesty, for that in these matters is out of the question, but in point of law,) to refuse paying the stipulated price for an engagement which the law would have enabled him to support. The foundation of the judgment is that the policy was void, but, according to the dicta referred to, it was not void; and the policy of the law might have been abundantly satisfied, by holding that there was a legal contract, giving a legal claim for the payment of the premium, and leaving the illegal and collateral contract of partnership to the consequences of its own inefficacy.

In Watts *v.* Brooks, 3 Ves. 612. there had been a contract of partnership in insurance, between the plaintiff and defendant, as well upon ships and cargoes as upon lives; and upon a general bill for an account, the Lord Chancellor (Loughborough) said, that though he was of opinion that the judgment of the Court of King's Bench, in Booth and Hodgson, was right, it went no farther than that the Court would not enforce those contracts; but where the parties had had dealings together upon a variety of transactions, and losses had been incurred and paid, and a general account was sought, he did not execute the contract against law, but he should do injustice if he did not give the advantage, if any advantage had arisen, or charge any loss which had happened. If it was a smuggling business, and they had been settling profit and loss upon smuggling transactions, he should do great injustice if he did not bring that into account. So upon stock transactions, though the Court would not execute the contract, yet where the parties had been settling stock dealings and paying differences, he must bring these into account. Lord Eldon, in Aubert *v.* Maze, says, with reference to the preceding case of Watts *v.* Brooks, that it may be observed, that it is possible that where parties have settled the balance of a mixed account between them, of long standing, and one party has had an advantage for many years of credit being given to him for certain sums therein, a court of equity may feel itself called upon to open the whole account, if the party, who has already taken credit for those sums, should think proper to object to an account being taken of the residue. But if that was to be considered as a case in which it was drily decided, that a master, in the course of taking an account, found certain sums paid on account of any of these illegal transactions, he may, on the ground of consent to such payment, view them in the same light as the other items of the account, it did not appear to him, that the case proceeds upon a principle sufficiently consistent with the Act of Parliament to justify the adoption of it. And in Knowles *v.* Haughton, 11 Ves. 168. an account of partnership transactions, so far as related to insurance, was refused—and the Master of the Rolls said, he had always found it difficult to reconcile the distinction, in Watts *v.* Brooks, to his mind.

If the consent, which is referred to in the above observations, is merely the general consent resulting from the illicit partnership, I think it will be impossible to contest, with any regard to legal principles, the justness of the observations respecting it. But if there is an express and immediate subsequent consent to take such payments into account, the questions will, perhaps, in some degree, depend upon the adoption or rejection of the great principle in Faikney *v.* Reynons—although, in Edgar *v.* Fowler, 2 East. 222. it was held, that the mere statement of an account was not equivalent to the payment of the money, so as to give effect to an illegal contract

No. III. 6 Geo. I. c. 18.

or going to sea, or may lend money by way of bottomry as aforesaid, as fully and beneficially as if this Act had never been made, so as the same be not upon the account or risque of a corporation or body politick, or upon the account or risque of persons acting in a society or partnership for that purpose as aforesaid; any thing herein contained to the contrray notwithstanding.

XIII. [Forging the common seal of the corporations or any policy, &c. felony without benefit of clergy.]

XIV. [None may be governor, &c. of both the corporations at the same time, or purchase stock in both corporations. Penalty.]

XV. [On three years' notice at any time within 31 years, on payment of the 300,000l. the corporations may be determined by parliament.]

XVI. [After 31 years, if the corporations are judged inconvenient, his Majesty may determine them.]

No other like Corporations grantable.

XVII. Nevertheless it is intended and hereby declared and enacted, That in case the said corporations shall be redeemed upon such notice and payment within the said term of thirty-one years, or be revoked by such letters patents as aforesaid, after the said term of thirty-one years, the same corporations, or any corporation or corporations with like powers privileges benefits and advantages shall not be grantable again to any persons or corporations whatsoever, but shall remain suppressed for ever, as having been found inconvenient and prejudicial to the publick.(2)

(2.) Having in a preceding Note adverted to the cases decided with respect to the construction of the clause giving to the chartered companies the exclusive privilege of insuring by a common fund, I shall here take the liberty of expressing the sentiment which I have long entertained, that few provisions in the Statute Book are attended with more injurious and detrimental consequences, with relation to the subject to which they are applied, than the present. It is not probable, that in the present times any such views of public policy, as are expressed in the preamble of the statute, would have much influence in opposition to the known advantages of freedom of competition; and it is manifest, that even at the time of passing the Act, the assistance rendered to the Civil List was an argument of much greater efficacy than the expectation of any beneficial consequences to the public from the nature of the regulation; but in the general state of alarm and confusion, arising from the bursting of the South Sea Bubble, questions of general policy were not likely to be examined with a very calm and settled attention, and from the pernicious consequences that had resulted from an excessive confidence in bold and impudent projects, an error on the side of excessive caution would not be scrutinized with much severity.

To the right acquired by law in the existing companies, that sacred respect is due which should prevent the slightest encroachment for the sake of a general benefit to the public, without affording a full and liberal compensation. In estimating the extent of such compensation, regard is to be had to the present extent of insurance effected by the companies, the average profit arising thereon for a reasonable and adequate length of time, and the probable diminution of such profit by admitting a competition which the Act at present excludes, with such a preponderance in favour of the companies as would preclude the reasonable apprehension of error and injustice. The fund for answering such compensation would, I conceive, be easily found in an adequate charge upon private policies.

The advantage to be expected from such a change would arise from a competition for a character of fairness and integrity, as is fully evinced in the instance of the several Societies for Insurance from Fire and on Lives, and the reasonable preference which is at present given to the known principles that regulate the practice of the chartered Companies; whereas to any person who looks with attention at the judicial proceedings of the country, it is obvious, that in no one department of the law (with the single exception of cases founded on the Annuity Act) is there exhibited so extended a practice of chicanery and dishonesty as in the objections taken to the validity of policies of insurance.

The original purpose of that contract, as affording an indemnity against inevitable accidents, is evidently of the most beneficial tendency; and the advantage resulting from it, notwithstanding all the subtractions arising from an unfair spirit of resistance, are of very great magnitude and importance; but after the compensation for the indemnity is paid, and the loss which has been contemplated has occurred, without the slightest imputation of unfairness or misconduct, the general course of proceeding appears to be to examine, whether, by any means, the law will afford an opportunity of evading the performance of the engagements that have been deliberately entered into; and a person who would be hooted out of Garraway's, if insisting upon the strict protection of the law upon a contract for the transfer of stock, will strut across to Lloyd's, with all the confidence of an honest man, while sheltering himself under the protection of the most strict and technical objection to the policy of insurance.

The entering into contracts, in direct and wilful derogation of the law, is a proceeding which I have no wish to commend or apologize for; but there are many instances in which the rules of law, for very adequate reasons, may withhold re-

No. III.
6 Geo. I.
c. 18.

XVIII. And whereas it is notorious that several undertakings or ‘ projects of different kinds have at some time or times since the four- ‘ and-twentieth day of *June* one thousand seven hundred and eighteen ‘ been publickly contrived and practised, or attempted to be practised ‘ within the city of *London* and other parts of this kingdom, as also in ‘ *Ireland* and other his Majesty's dominions, which manifestly tend to the ‘ common grievance prejudice and inconvenience of great numbers of ‘ your Majesty's subjects in their trade or commerce and other their ‘ affairs; and the persons who contrive or attempt such dangerous and ‘ mischievous undertakings or projects under false pretences of publick ‘ good do presume, according to their own devices and schemes, to open ‘ books for publick subscriptions and draw in many unwary persons to ‘ subscribe therein towards raising great sums of money, whereupon the ‘ subscribers or claimants under them do pay small proportions thereof, ‘ and such proportions in the whole do amount to very large sums; ‘ which dangerous and mischievous undertakings or projects do relate to ‘ several fisheries and other affairs wherein the trade commerce and wel- ‘ fare of your Majesty's subjects, or great numbers of them, are concerned ‘ or interested: And whereas in many cases the said undertakers or ‘ subscribers have, since the said four-and-twentieth day of *June* one thou- ‘ sand seven hundred and eighteen, presumed to act as if they were cor- ‘ porate bodies and have pretended to make their shares in stocks trans-

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dress for the enforcing a contract which it would be a violation of the plainest and simplest principles of common integrity to evade; and of this the illustrations, arising from the subject before us, are unfortunately too numerous and manifest.

The following observation of Lord Loughborough, in deciding upon the invalidity of a contract of another nature, is sufficiently indicative of the grand principle which it is desirable to inculcate—"This agreement, resting on private contract and honour, may perhaps be fit to be executed by the parties, but can only be enforced by considerations which apply to their feelings, and is not the subject of an action. The law encourages no man to be unfaithful to his promise, but legal obligations are, from their nature, more circumscribed than moral duties"—Parsons *v.* Thompson, 1 H. Bla. 327.

Without entering into a long enumeration of cases in support of the observations which I have made respecting policies of insurance, or intending to cast reflections on particular individuals, who, in defending themselves against particular claims, and who have only acted according to the general system which I am endeavouring to counteract, I am induced to refer to a case in which it was objected with success that the insurance could not be recovered on a vessel warranted neutral, and lost by the perils of the seas, because, for a small part of the voyage, a proper document for attesting such neutrality was not on board, but in which case I well remember that it was observed by one of the judges who concurred in the decision, that he remembered the times where an underwriter would have been ashamed to have insisted upon such an objection. The cases in which the liability upon an insurance *at and from Canton* was objected to, because the being at Canton was an infraction of the charter of the East India Company—a more recent case in which the objection was taken from the forgotten and abandoned charter of the South Sea Company—the cases of objections from an inaccuracy in respect of the complicated provisions of the Register Acts, wholly unconnected with the loss incurred, are all instances of that spirit of resistance to fair and reasonable claims which, I conceive, would be most materially diminished by the removal of the existing restrictions upon insuring by a common fund, and by admitting that competition which would excite an interest in acquiring the character as attached to known respectable bodies for a fair performance of the engagements that are entered into according to their real purpose and intention as opposed to the existing and too powerful interest of looking for a defence in the intricacies and subtleties of the law.

I have, in conversation, heard it offered as a defence against the habit of insurers to insist upon minute and technical objections, that they are exposed to numerous frauds which they are unable to detect or prove, and that therefore the insisting upon legal advantages in their favour is only an adequate means of security and defence; but I apprehend that it will not require any particular strength of reasoning to prove, that to commit a fraud upon one person is not the proper means of obtaining security or indemnity against the fraud committed by another.

Besides the objections already mentioned to the existing monopoly, there is another of very considerable importance, in the necessity which it imposes upon the assured of incurring the expence of a separate action upon every separate subscription to the policy. The Insurers have an opportunity, by means of the well-known practice of the consolidation rule, to unite in one common defence, but, by declining to take that course, they have the opportunity of harassing the assured with an accumulation of expence, in many cases exceeding the amount of the indemnity which he sues for.

No. III. 6 Geo. I. c. 18.

'ferrable or assignable without any legal authority either by act of parliament or by any charter from the Crown for so doing; and in some cases the undertakers or subscribers since the said four-and-twentieth day of *June* one thousand seven hundred and eighteen have acted or pretended to act under some charter or charters formerly granted by the Crown for some particular or special purposes therein expressed, but have used or endeavoured to use the same charters for raising joint stocks and for making transfers or assignments or pretended transfers or assignments for their own private lucre, which were never intended or designed by the same charters respectively; and in some cases the undertakers or subscribers, since the said four-and-twentieth day of *June* one thousand seven hundred and eighteen, have acted under some obsolete charter or charters although the same became void or voidable by nonuser or abuser or for want of making lawful elections which were necessary for the continuance thereof; and many other unwarrantable practices (too many to enumerate) have been and daily are and may hereafter be contrived set on foot or proceeded upon to the ruin and destruction of many of your Majesty's good subjects if a timely remedy be not provided: And whereas it is become absolutely necessary, That all publick undertakings and attempts tending to the common grievance prejudice and inconvenience of your Majesty's subjects in general or great numbers of them, in their trade commerce or other lawful affairs, be effectually suppressed and restrained for the future by suitable and adequate punishments for that purpose to be ascertained and established:' Now for suppressing such mischievous and dangerous undertakings and attempts and preventing the like for the future, May it please your most excellent Majesty, at the humble suit of the said Lords Spiritual and Temporal and Commons in this present Parliament assembled, that it may be enacted; and be it enacted by authority of this present Parliament, That from and after the four and twentieth day of *June* one thousand seven hundred and twenty all and every the undertakings and attempts described as aforesaid and all other publick undertakings and attempts tending to the common grievance prejudice and inconvenience of his Majesty's subjects, or great numbers of them, in their trade commerce or other lawful affairs, and all publick subscriptions receipts payments assignments transfers pretended assignments and transfers and all other matters and things whatsoever, for furthering countenancing or proceeding in any such undertaking or attempt, and more particularly the acting or presuming to act as a corporate body or bodies, the raising or pretending to raise transferrable stock or stocks, the transferring or pretending to transfer or assign any share or shares in such stock or stocks without legal authority either by Act of Parliament or by any charter from the Crown, to warrant such acting as a body corporate or to raise such transferrable stock or stocks or to transfer shares therein, and all acting or pretending to act under any charter formerly granted from the Crown for particular or special purposes therein expressed by persons who do or shall use or endeavour to use the same charters for raising a capital stock or for making transfers or assignments or pretended transfers or assignments of such stock not intended or designed by such charter to be raised or transferred, and all acting or pretending to act under any obsolete charter become void or voidable by nonuser or abuser or for want of making lawful elections which were necessary to continue the corporation thereby intended, shall (as to all or any such acts matters and things as shall be acted done attempted endeavoured or proceeded upon after the said four-and-twentieth day of *June* one thousand seven hundred and twenty) for ever be deemed to be illegal and void, and shall not be practised or in anywise put in execution.

After 24th June, 1720, all Undertakings tending to the Prejudice of Trade, and all Subscription, &c. thereto,

or presuming to act as Corporate Bodies without legal authority,

and all acting under obsolete Charters, &c.

shall be deemed illegal and void.

All such Undertakings deemed publick Nuisances.

XIX. And be it further enacted by the authority aforesaid, That from and after the said four-and-twentieth day of *June* one thousand seven hundred and twenty all such unlawful undertakings and attempts so tending to the common grievance prejudice and inconvenience of his Majesty's subjects or a great number of them in their trade commerce or other lawful affairs, and the making or taking of any subscriptions for that

No. III. 6 Geo. I. c. 18.

purpose, the receiving or paying of any money upon such subscriptions, the making or accepting of any assignment or transfer or pretended assignment or transfer of any share or shares upon any such subscription, and all and every other matter or thing whatsoever for furthering countenancing or proceeding in any such unlawful undertaking or attempt, and more particularly the presuming or pretending to act as a corporate body, or to raise a transferrable stock or stocks or to make transfers or assignments of any share or shares therein without such legal authority as aforesaid, and all acting or pretending to act under any charter formerly granted from the Crown for any particular or special purposes therein expressed by persons making or endeavouring to make use of such charter for any such other purpose not thereby intended, and all acting or pretending to act under any such obsolete charter as is before described and every of them (as to all or any such acts matters or things as shall be so acted done attempted endeavoured or proceeded upon after the said four-and-twentieth day of *June* one thousand seven hundred and twenty) shall be deemed a publick nuisance and nuisances, and the same and all causes matters and things relating thereto and every of them shall for ever hereafter be examined heard tried and determined as common nuisances are to be examined heard tried and determined by or according to the laws of this realm; and all offenders therein being thereof lawfully convicted upon information or indictment in any of his Majesty's courts of record at *Westminster* or in *Edinburgh* or in *Dublin*, shall be liable to such fines penalties and punishments whereunto persons convicted for common and publick nuisances are by any of the laws and statutes of this realm subject and liable; and moreover shall incur and sustain any further pains penalties and forfeitures as were ordained and provided by the statute of provision and *præmunire* made in the sixteenth year of the reign of King RICHARD the Second. (3.)

and shall incur a Præmunire, 16 R. 2. c. 5.

(3.) In Rex *v.* Cawood, 2 Ld. Raym. 1361. 2 Str. 472. it was ruled, that the Court were not obliged to give the whole judgment as in case of a præmunire, but only such part as in their discretion they should think fit, and they adjudged the defendant to pay a fine of 5*l.* and to be imprisoned during the King's pleasure. This case, which occurred two years after the passing of the Act, was only brought before the Courts until the King *v.* Dodd, 9 East. 516. in which the Court declined to grant an information against the defendant for circulating schemes for a paper manufactory and a distillery, by which large capitals were to be raised in small transferrable shares, there having been a lapse of 87 years since any authenticated proceeding had been taken on this branch of the Act; but they declined giving any opinion how far the case, as stated, came within the Act, as the point might still arise upon indictment or information by the Attorney-General.

In Buck *v.* Buck, 1 Camp. N. P. 547. the plaintiff having employed the defendant to purchase five shares in a concern not incorporated, called the British Ale Brewery, and the defendant having only paid one half of the amount, which he had received and charged, it was ruled by Sir J. Mansfield, C. J. that the plaintiff, on account of the illegality of the concern, could not recover money which was so improperly retained, and a nonsuit was accordingly directed, with leave to move the Court to enter a verdict in the plaintiff's favour, but the case was not brought before the Court. The decision certainly went a very great length, however clearly the society might be brought within the Act, when it was held, that the mere carrier of a sum of money intended to be applied in purchasing a share of the concern, was entitled to purloin the money with which he was so intrusted. In Rex *v.* Stratton, *n. ibid.* Lord Ellenborough held, that an indictment could not be sustained for conspiring to deprive a person of the office of Secretary of the Philantrophic Annuity Society, and to prosecute him for obtaining money by false pretence, the Association appearing to be an unincorporated Company with transferrable shares.

The subject came into more direct discussion in Rex *v.* Webb and others, 14 East. 406. which was an indictment against the defendants founded upon the Act for subscribing to form a Society, called the Birmingham Bread and Flour Society: it appearing by special verdict, that the defendants with others, being inhabitants of Birmingham, mutually agreed to be co-partners in making bread, &c. with a capital of £20,000, to be divided into 20,000 shares—no person to hold more than 20—that no person should transfer any share, except the party, to whom it was transferred, should enter into a covenant for the performance of the clauses in the deed—that each member should purchase weekly, for every share, flour and bread, not exceeding in value one shilling. It was further found that the Company was originally instituted from laudable motives, for the purpose of more regularly supplying the town of Birmingham and its neighbourhood with flour and bread—that it was in its original institution, and still is, beneficial to the inhabitants at large at Birmingham and its neighbourhood, but

No. III. 6 Geo. I. c. 18.

How Merchants or Traders may have their Remedy against the Undertakers.

XX. And be it further enacted by the authority aforesaid, That if any merchant or trader at any time after the said four-and-twentieth day of *June* one thousand seven hundred and twenty, shall suffer any particular damage in his her or their trade commerce or other lawful affairs, by occasion or means of any undertaking or attempt matter or thing by this Act declared to be unlawful as aforesaid, and will sue to be relieved therein, then and in every such case such merchant or trader shall and may have his and their remedy for the same by an action or actions to be grounded upon this statute, against the persons societies or partnerships or any of them who contrary to this Act shall be engaged or interested

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was prejudicial to the bakers and millers of the town and neighbourhood in their respective trades; and it was ruled, that the indictment could not be maintained. Lord Ellenborough, in delivering the opinion of the Court, took a very full and elaborate view of this part of the Act, in the course of which he observed, that what was described as illegal might be divided into two classes—First, the undertakings described in the preamble, especially those in which the parties pretend to act as a body corporate, or to have transferrable stock—and, Secondly, all other undertakings tending to the common grievance, &c. of the King's subjects, or a great number of them, in their trade, commerce, or other lawful affairs. Upon the view taken of the Statute, he said, the Court thought it impossible to say that it makes a substantive offence to raise a large capital by small subscriptions, without any regard to the nature and quality of the objects for which the capital was raised, or whatever might be the purposes to which it was to be applied. The recital of the Act referred to *such dangerous and mischievous* undertakings as manifestly tend to the common grievance, &c.—the enacting part, sec. 18. to subscriptions for *such* undertakings, viz. such as are mentioned in the preamble—the enacting part, sec. 19. to unlawful undertakings and attempts *so tending* to the common grievance, &c. and to making subscriptions *for that purpose*. It is therefore, he said, only where the subscription is with reference to undertakings, &c. which the Act prohibits, that it is illegal—the Act does not apply indiscriminately to all subscriptions. The purpose being in this case expressly found to be beneficial, the only remaining question is, whether, as the shares are to the extent pointed out transferrable, the defendants have offended in respect of having raised such a description of transferrable stock? It may admit of doubt, whether the mere raising transferrable stock is in any case *per se* an offence against the Act, unless it has relation to some undertaking or project which has a tendency to the common grievance, prejudice, or inconvenience of his Majesty's subjects, or of great numbers of them? The mischief intended to be remedied arose from *such* undertakings and projects, and the suppression of *such* undertakings and projects seems to be the great object of the Act. But without entering particularly into that point, it may be sufficient to say here, that, in the qualified extent to which these shares are transferrable, it cannot be said that there has been *such* a raising of transferrable tock as to fall clearly within the scope of the Act. He then particularly adverted to its not being the object of the undertaking to raise stock *for the purpose* of transfer, as a commercial speculation—to the limited number of shares which any individual was allowed to hold—and to the necessity of entering into a covenant to take a certain quantity of bread or flour weekly, as circumstances shewing the case not to be within the operation of the Act, and judgment was accordingly given for the defendants.

In Pratt *v.* Hutchinson, 15 East. 511. the action was brought on a bond given to the Treasurer of a Building Society, the members of which were to subscribe monthly sums for building houses, to be taken by the subscribers in succession, by lot, such subscribers entering into a bond for the payment of their future contributions. It was pleaded as sufficient to bring the case within the Statute, that, according to the rules, every member should have power to sell his share, provided the purchaser should become a party to the articles; and that no person should be permitted to purchase until he had been first proposed and approved at a meeting of the Society; and that certain tradesmen named should be employed, and no others. The Court called upon the defendant's counsel to state upon what ground it could be contended, that the shares were transferrable within the meaning of the Statute, where the holder had not the power of transferring, except upon the condition of the purchaser being approved. It being urged, that in the preceding case the nuisance was negatived by the special finding of the jury, Bailey, J. observed, that the plea did not allege generally as a question for the jury, that the Society was prejudicial to the public at large, and therefore, unless it be brought within the Statute, it is no answer.. An objection being taken on account of the stipulation of employing particular tradesmen, Lord Ellenborough said, the combination must be for some illegal object, but there is nothing illegal in stipulating to employ particular persons only in the building, and the Court decided, that there was no pretence for the objection made upon the Statute.

In Carlen *v.* Drury, 1 V. & B. 154. a question arose as to the legality of a partnership in a Brewery of 1600 shares, to be under the directions of managers and a committee. The Lord Chancellor declined entering into the question, whether the partnership fell within the terms of the Act; and decided the case upon a collateral ground, applicable to a partnership to which there was no legal objection.

in any such unlawful undertaking or attempt; and every such action and actions shall be heard and determined in any of his Majesty's courts of record aforesaid, wherein no essoign protection wager of law or more than one imparlance shall be granted or allowed; and in every such action the plaintiff shall or may recover treble damages with full costs of suit.

Penalty on Brokers buying or selling any Shares in such Undertakings.

XXI. And it is hereby further enacted by the authority aforesaid, That if any broker or person acting as a broker for himself or in behalf of any others, at any time or times after the said four-and-twentieth day of *June* one thousand seven hundred and twenty shall bargain sell buy or purchase or contract or agree for the bargaining selling buying or purchasing of any share or interest in any of the undertakings by this Act declared to be unlawful, or in any stock or pretended stock of such undertakers, that then and in every such case every such broker or person acting as such shall not only be disabled and rendered incapable to be or act as a broker for the future, but shall also forfeit and lose the sum of five hundred pounds, to be recovered, to wit one moiety thereof to the use of the King's Majesty his heirs and successors and the other moiety thereof to the use of any person or persons who will inform or sue for the same in any of his Majesty's said courts of record as aforesaid, with full costs of suit.

XXII. [Not to extend to undertakings settled before the 24th of June 1718.]

Not to prejudice the two Corporations hereby erected.

XXIII. Provided also and it is hereby further intended declared and enacted by the authority aforesaid, That any of the clauses matters or things in this Act contained shall not extend or be construed to hinder his Majesty from erecting or establishing the two corporations intended by this Act to be erected and established as is above mentioned or either of them, or to prejudice those two corporations or either of them (when erected) in the exercise or enjoying of the powers privileges benefits or advantages intended to be granted to them respectively by such respective charters or indentures as are above mentioned in that behalf, subject nevertheless to such powers of redemption or revocation as are above in this Act prescribed for that purpose; any thing in this Act contained to the contrary notwithstanding. (4.)

XXIV. [Not to prejudice the South-Sea Company.]

Not to restrain the carrying on of any home or foreign Trade in Partnership.

XXV. Provided always, That nothing in this Act shall extend or be construed to extend to prohibit or restrain the carrying on of any home or foreign trade in partnership in such manner as hath been hitherto usually and may be legally done according to the laws of this realm now in force, excepting only as to the insuring of ships and goods or merchandizes at sea, or going to sea and lending money upon bottomry; any thing in this Act to the contrary in anywise notwithstanding. (5.)

XXVI. [South-Sea and East-India Companies may advance money on bottomry to their Companies, &c.]

XXVII. [Not to extend to Corporations formerly created or to any subscriptions to be made to the capital of the South-Sea.]

XXVIII. [Salvo for East-India Company's privileges.]

XXIX. [Companies not to lend money to the Crown but on credit of Acts of Parliament.]

(4.) The inserting this proviso is a striking instance of superfluous caution, and affords a strong illustration of the weakness of the incidental arguments which are sometimes deduced from particular saving clauses, as limiting the operation of the general purview of the Statute. It is impossible that any Court could have held it necessary to insert a saving clause, in favour of the establishments erected by the very Act which contains the general prohibition.

(5.) An idea is sometimes entertained, that partnerships, in general, consisting of more than six persons, are illegal; but the only prohibition upon the subject is that contained in Statute 6 Anne, c. 22. sec. 9. and subsequent Statutes, which prohibit, during the continuance of the Charter of the Bank of England, partnerships of more than six persons taking up money upon their notes, payable on demand in less than six months from the time of borrowing.

No. IV. 11 Geo. I. c. 30.

[No. IV.] 11 George I. c. 30.—An Act for more effectual preventing Frauds and Abuses in the Public Revenues; for preventing Frauds in the Salt Duties, and for giving Relief for Salt used in the curing of Salmon and Codfish, in the year One Thousand Seven Hundred and Nineteen, exported from that Part of *Great Britain* called *Scotland*; for enabling the Insurance Companies to plead the General Issue in Actions brought against them; and for securing the Stamp Duties upon Policies of Insurance.

11 Geo. I. c. 30.
6 G. 1. c. 18.

'XLIII. AND whereas by an Act passed in the sixth year of his Majesty's reign, intituled *An Act for the better securing certain Powers and Privileges intended to be granted by his Majesty by two Charters for Assurance of Ships and Merchandizes at Sea, and for lending Money on Bottomry; and for restraining several extravagant and unwarrantable Practices therein mentioned*, his Majesty was enabled to erect two distinct corporations for assurance of ships goods and merchandizes at sea or going to sea, and for other purposes therein mentioned: And whereas his Majesty hath been graciously pleased, pursuant to the said Act, to erect two distinct corporations for the purposes aforesaid, one by the name and title of *The Royal Exchange Assurance*, and the other by the name and title of *The London Assurance*: And whereas the said corporations in pursuance of the said Act and the ends and purposes for which they were so incorporated have from time to time as occasion hath required, entered into and executed great numbers of policies of assurance for the assuring of ships and goods and merchandizes at sea or going to sea and still continue so to do; but by reason of their being bodies corporate such policies of assurance could not be entered into by their subscribing of the same as is the constant usage for private insurers to do, but the respective common seals of the said corporations are set to such policies of assurance, and by means thereof the manner of proceeding and pleadings in any suit or action to be commenced upon such policy of assurance under the respective common seals of the said corporations are different from the proceedings and pleadings in actions and suits commenced upon policies of assurance entered into by private insurers or persons not incorporated in manner as aforesaid; and by reason of the necessity of pleading specially in such cases, the whole merit of the case in question cannot oftentimes come into consideration and the jury by the rules of law are often obliged to find a verdict for the whole sum of money assured, though it be never so apparent that in justice only a small part thereof is due to the assured by such policies of assurance; and the said corporations are thereby forced to seek relief in courts of equity when the matter in question might be as well determined at once by a jury as it is done in the case of private insurers or persons not incorporated;' For Remedy whereof,

The Insurance Companies may plead the General Issue in Actions brought against them.

Be it enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* one thousand seven hundred and twenty-five, on all actions of debt to be sued or commenced against either of the said corporations upon any policies of assurance under the common seal of such corporation for the assuring of any ship or ships goods or merchandizes at sea or going to sea, it shall and may be lawful to and for the said respective corporations in such action or suit to plead generally that they owe nothing to the plaintiff or plaintiffs in such suit or action; and that in all actions of covenant which shall be sued or commenced against either of the said corporations upon any such policy of assurance under the common seal of such corporation for the assuring any ship or ships goods or merchandizes at sea or going to sea it shall and may be lawful for the said respective corporations in such action or suit to plead generally that they have not broke the covenants in such policy contained

No. IV.
11 Geo. I.
c. 30.

or any of them; and if thereupon issue shall be joined it shall and may be lawful for the jury if they shall see cause upon the trial of such issue to find a verdict for the plaintiff or plaintiffs in such suit or action and to give so much or such part only of the sum demanded if it be an action of debt, or so much in damage if it be an action of covenant, as it shall appear to them upon the evidence given upon such trial such plaintiff or plaintiffs ought in justice to have or is or are entitled unto; any law or custom to the contrary notwithstanding.

[No. V.] 19 George II. c. 37.—An Act to regulate Insurance on Ships belonging to the Subjects of *Great Britain*, and on Merchandizes or Effects laden thereon.

19 Geo. II. c. 37.

'WHEREAS it hath been found by experience that the making assurances interest or no interest, or without further proof of interest than 'the policy, hath been productive of many pernicious practices, whereby 'great numbers of ships with their cargoes have either been fraudulently 'lost and destroyed or taken by the enemy in time of war; and such as-'surances have encouraged the exportation of wool and the carrying on 'many other prohibited and clandestine trades, which by means of such 'assurances have been concealed and the parties concerned secured from 'loss as well to the diminution of the publick revenue as to the great 'detriment of fair traders; and by introducing a mischievous kind of 'gaming or wagering, under the pretence of assuring the risque on ship-'ping and fair trade, the institution and laudable design of making assur-'ances hath been perverted; and that which was intended for the en-'couragement of trade and navigation has in many instances become 'hurtful of and destructive to the same:' For remedy whereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the first day of *August* one thousand seven hundred and forty-six, no assurance (1.) or assurances shall be made by any person or persons bodies corporate or politick on any ship or ships belonging to his Majesty or any of his subjects, (2.) or on any goods merchandizes or effects laden or to be laden on board of any such ship or ships interest or

No Assurance to be made on Ships or Effects, &c. of Subjects, Interest or no Interest.

(1.) The Act prohibits all contracts of Insurance, by way of gaming or wagering; therefore, an agreement in consideration of £20 to pay £1000, in case a ship should not save her passage to Canton that season (not being founded upon an insurable interest) is void.

(2.) It is doubtful whether a wagering policy was not void at common law, and some of the earlier cases cited in the Books on Insurance seem to proceed upon that supposition, and by the ordinances of most other countries such Insurances are void, but their legality was established by some cases previous to the Statute, and, except so far as the Statute interferes, they are still admitted as valid, and of course the prohibition does not extend to foreign ships or *comme semble* the goods on board such ships; and therefore in Thelluson *v.* Fletcher, Doug. 315. upon an insurance of goods on board ships, *the policy to be deemed sufficient proof of interest*, it was ruled, that the plaintiff might recover the amount of the defendant's subscription without any proof of the value, or any other evidence; and in Nantes *v.* Thompson, 2 East. 385. it was held, that it was not necessary in a policy on a foreign ship to aver any interest in the assured, although there be no such words as *interest or no interest* in the policy (and *vide* Kellner *v.* La Messurier, 4 East. 396. in which a question arose as to the necessity and manner of alleging a ship to be foreign, and whether the Statute had rendered any other mode of declaring on the subject of interest necessary than what was usual and deemed sufficient before, but no opinion was given on the point, the case being decided upon a different ground); but in Cousins *v.* Nantes, 3 Taunt. 513. (being an action on the same policy as the case of Nantes *v.* Thompson) it was ruled in the Exchequer Chamber, not to be sufficient to shew in the declaration that the ship did not belong to the King or any of his subjects, as supplying the necessity of words shewing that it was a wagering policy, but that it was necessary to be inserted in the contract whether the policy was a wagering policy or not; and that, not being a wagering policy, but an ordinary policy, made for the purpose of indemnifying the person insured, it was necessary to allege the interest in the declaration.

No. V. 19 Geo. II. c. 37.

no interest, or without further proof of interest than the policy, (3.) or by way of gaming or wagering or without benefit of salvage to the assurer; and that every such assurance shall be null and void to all intents and purposes. (4.)

Assurance on private Ships of War, may be made, Interest or no Interest.

II. Provided always, and be it further enacted by the authority aforesaid, That assurance on private ships of war fitted out by any of his Majesty's subjects solely to cruise against his Majesty's enemies may be made by or for the owners thereof, interest or no interest, free of average and without benefit of salvage to the assurer; any thing herein contained to the contrary thereof in any wise notwithstanding.

(3.) The master of a ship drew a bill on his owners for supplies for the ship, and wrote on the bill, "If this be not honoured the holder will insure the amount, and place the premium to the drawer's account." This bill being dishonoured, the holder insured the ship for three months and declared interest in the bill, which was to be sufficient proof of interest. The ship was lost after the three months. *Quære*, whether such an insurance be void within stat. 19 Geo. II. c. 37. Tasker *v.* Scott, 6 Taunt. 234. S. C. 1 Marsh. 556.

(4.) It is observed by Mr. Millar in his Treatise on Insurance, that the object of insurance strictly speaking, is not to make a positive gain, but to avoid actual damage and harm from the event provided against. The assured must not only have an interest in the subject, but he must be seeking indemnification in case that subject in which he is so interested should be lost or impaired. But that although an insurance, strictly and accurately speaking, seems to relate to positive loss, merely in opposition to expected profit, yet this distinction is not generally attended to. The failure of an advantage of which we have formed a strong expectation does not appear very different from actual damage sustained. Between a wager, therefore, and an insurance, the material difference seems to be, the assured having a pecuniary interest in the subject. He further observes, that by the ordinances of almost all the commercial states in Europe, wagers, upon mercantile adventure, are totally prohibited. No support is given in any extent whatever to a gaming contract, if it be executed in the form of an insurance, and every insurance upon expected profit, in opposition to positive loss, is mentioned in a very unfavourable point of view.

The French regulation prohibits the owner and master of ships purchasing insurance on their freight, or merchants on the expected profits of their goods. By the ordinance of Coningsberg, all insurances on expected gain of future freight monies, securing wagers, are irrevocably forbid. In Britain, ideas less strict have been entertained: in particular, the distinction between an insurance against positive loss and upon expected profit is totally overlooked.

In Grant *v.* Parkinson, Park, c. 14. p. 269. 2 ed. 1 Marshall, 111. an insurance was sustained on goods valued at 1000*l.* being profits expected to arise on the cargo, in the event of its arriving at Quebec. It appeared, that the insurance was on the profits expected to arise on a cargo of Molasses belonging to the plaintiff, who had a contract to supply the army with spruce beer. In Flint, *v.* Le Mesurier, 1796, Park, c. 14. Lord Kenyon expressed a strong opinion in favour of an insurance, declared by the policy to be on commission, as consignee of the cargo. In Barclay *v.* Cousins, 2 East. 545. an insurance was held on profits valued at ———, on an African voyage—it being averred, that plaintiff was interested in the profits to arise from the sale and disposal of the cargo. A very elaborate judgment, stating a general view of the law upon the subject, was given by Lawrence, J.—and see Henrickson *v.* Margetson, *n. ibid.* where the policy was declared to be on imaginary profits. In Eyre *v.* Glover, 16 East. 218. the insurance was *on Profits*, without further description, and held good. A mariner cannot insure his wages or commissions—Webster *v.* De Tastet, 7 T. R. 157—it being against the maritime law, that wages should be due to them unless freight is earned; but this does not apply to the master, who may insure his commissions, privileges, and *comme semble* his wages.—King *v.* Glover, 2 N. R. 206.

With respect to interests arising out of captures and detention, it was ruled, in Le Cras *v.* Hughes, Park, c. 14. Millar, 226. that an insurance might be supported upon a joint capture, by sea and land forces, on account of the interest of the officers and crews of the squadron in the prize. Lord Mansfield, after adverting to the interests under the Prize Acts and proclamation, said, besides the Crown has long been in the use to grant captures to the takers: here the assured have possession with expectations founded on universal practice. In order to render insurance a contract of indemnity, an interest on the part of the assured is necessary, but no particular form of interest. It is sufficient if the contingency be of such consequence that I may lose it if it does not happen—Millar. Whenever a capture has been made by a King's ship, or a privateer, the Crown has always given a grant of it after condemnation. There is no instance to the contrary. Has not then the insured such an interest in the ship coming home as to entitle him to an indemnity? Suppose a man is made agent of the prizes, he has not the possession of the property, and yet he has such an interest in any ship arriving home, that he may insure. Here the insured have the possession, and a certain expectation of receiving the property captured, for this is an emolument from the Crown—Park; but as to this view of the subject, *vide infra*. In Boehm *v.* Bell, 8 T. R. 154. the action was for a return of premiums on the insurance of a vessel captured, and was ruled not to be maintainable. Lord Kenyon—"The

III. Provided also, and it is hereby enacted, That any merchandizes or effects from any ports or places in *Europe* or *America*, in the possession of the crowns of *Spain* or *Portugal*, may be assured in such way and manner as if this Act had not been made.

IV. And be it further enacted by the authority aforesaid, That it shall not be lawful to make re-assurance, unless the assurer shall be insolvent become a bankrupt or die; in either of which cases such assurer his executors administrators or assigns may make re-assurance to the amount

Assurance on effects from Spain or Portugal.

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ship was captured by captains acting in the service of their country, and upon whose conduct there is not the smallest imputation: they had the possession of the property insured, and from that possession certain rights and duties resulted. If it were a legal capture, the captors were entitled; if the capture were improperly made, they were liable to be called to an account in the Court of Admiralty, where they might be amerced in damages and costs. It was important to them, that there should be something forthcoming to answer for the amount of those damages." Lawrence, J.—"The case stands on this short question, whether or not the assured had an interest which they might insure? Did they mean to game? Or, was not there a loss against which they might indemnify themselves by a policy of insurance? I do not mean a certain, but a possible loss. Now it has been shewn, that the Court of Admiralty might have decreed damages and costs, and that is sufficient." Some doubts having been thrown on this subject, in the discussion in the House of Lords of the case of Lucena and Crawfurd, *infra*, it was holden, in Sterling *v.* Vaughan, 11 East. 619. that an insurance might be made of a prize taken by the conjoined forces of the army and navy, by an agent appointed to act on behalf of all interested in the capture; and by Lord Ellenborough, "By the Act of 45 Geo. III. c. 72. the Crown gives up its rights in the prize to the captors, subject, however, as before, to the final adjudication of the property as prize. But it is said, that the Crown may still release the prize to the captured before condemnation. But that right of the Crown trenches no more upon the insurable interest of the captors, than upon that of the King himself. It is then objected, that the property in the prize may never become vested in the captors. It is vested, however, as far as the Crown has any right to vest it, defeasible no doubt by an adjudication of the Court of Admiralty; but is it not in common experience, that a defeasible interest is insurable? It is the case of every consignee of goods under a bill of lading; they may be stopped *in transitu*, and his interest defeated; the captors have the actual possession of the grant of the King, the only person in the kingdom who could contest it with them. They have the possession, with a partial right of disposing of the thing immediately. This is not the insuring a mere expectation, like the case of the Dutch Commissioners, *infra*. But these captors had a present possession, and a right to maintain trespass against any person attempting to take the prize from them. Even with respect to captors in general, supposing the prize not to have been acquired tortiously, but *jure belli*, I should think, that in respect of their possession and special property they might insure; but it is not necessary to decide that general point, because here the captors had a more perfect right, a right of property, so far as the Crown had a power of granting it, liable only to be dispossessed by the release of the Crown before condemnation, or by sentence of restoration." The other judges expressed themselves to the same effect. With respect to the argument founded upon the King's power to release, Bailey, J. said, "The faith of the Crown is pledged to proceed to condemnation, and not to release the prize, except under special circumstances involving the interest of the public; the King can take nothing for himself, nor give it to any third persons.

But in Routh *v.* Thompson, 11 East. 428. an armed ship having captured and taken into Lisbon a Danish vessel, after a proclamation requiring the bringing such vessels into port, and having taken a freight to England, with which the vessel captured sailed on the day of issuing of letters of marque, it was ruled, that an insurance made on behalf of the captors could not be sustained. Lord Ellenborough on delivering the judgment of the court said, "The right had been put upon two grounds—first, that they had a well grounded expectation, warranted by the practice of the Crown in similar cases, that the ship and freight, had there been no loss, would have been granted to them—and secondly, that they had the lawful possession, and were liable, either to the Crown or the foreign owner, for the safe custody of the vessel. As to the first, they had no vested right; they could demand nothing of the Crown. Had the Crown made the grant in their favour, it would have been altogether *ex gratiâ*—a mere boon and gift. That gift might have been of the whole, or it might have been of part, and of a very inconsiderable part only. The bounty of the Crown would probably have been in proportion to the merit of the detention and capture, and the value of the prize. Had the ship arrived, the captors would have had a chance of a grant from the Crown; but can they in respect of that chance insure the ship's arrival, and supposing such a chance insurable, must it not be insured specifically as such chance? must not the interest be so described in the policy? can a man who has no right, legal or equitable, either in a ship or freight, effect an insurance on either, merely because he has a chance that some collateral benefit may arise to him, if the ship and cargo should arrive in safety? His Lordship referred to the passage above cited from Le Cras and Hughes, and the doubts thrown thereon by Lord Eldon, in Lucena *v.* Crawfurd, *post*; but, supposing the authority of that case were unquestionable upon both the points decided, held that it would afford no rule to govern a case like the present. With regard to

No. V.
19 Geo. II. c. 37.

of the sum before by him assured, provided it shall be expressed in the policy to be a re-assurance. (4.)

V. And be it further enacted by the authority aforesaid, That from and after the said first day of *August* all and every sum and sums of money to be lent on bottom-ree or at respondentia upon any ship or ships belonging to any of his Majesty's subjects, bound to or from the *East Indies*, shall be lent only on the ship or on the merchandize or effects laden or

The Conditions for lending Sums on Bottom-ree, upon Ships bound to or from the East Indies. See 5 Bur. 1394.

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the second point in the principal case, it was held, that the captors were not entitled to recover on the ground of possession—that it was a lawful possession, but they were not responsible for the ship's safety—that the Crown could not call upon them for damages, and they could have no right to ask for an indemnity, when they had not been, and (under the circumstances stated) could not have been damnified." The case was stated in such a manner as to exclude the question, whether the insurance might have been supported as made on behalf of the Crown.

Very considerable discussion respecting the nature of insurable interest, took place in respect of insurances effected by the commissioners upon Dutch property, in the year 1795. By 35 Geo. III. c. 80, § 21, the King was empowered to grant commissions to three or more persons, authorizing them to take the ships and cargoes, belonging to the United Provinces, into their possession and under their care, and to manage sell and dispose of the same to the best advantage, according to such instructions as they should receive. In Crawford & al. *v* Hunter, 8 T. R. 13, the declaration stated a commission issued to the plaintiff by virtue of the Act, that certain ships, &c. were seized at sea by his Majesty's sailors, upon which the plaintiffs, being such commissioners, caused an insurance to be made from St. Helena to London, that if the King's ships arrived in London, the plaintiffs would have been authorized to take them under their care, &c.—that they were interested to the amount insured—and that the insurance was made for their use, as such commissioners. Another count was upon the interest of the King, averring the insurance to be made on his behalf—and a third count, not averring any interest, alleged, that the ships were not belonging to his Majesty or any of his subjects, upon which the question arose, whether interest ought to have been averred, as has since been held necessary, in the case of Cousins *v.* Nantes, (see the last note.) Upon demurrer, it was ruled, upon the first count, that the commissioners had such an interest as enabled them to insure. The subject came more fully into consideration, in Lucena *v.* Crawfurd (*in error*) 3 B. & P. 75, and in Dom. Proc. 2 N. R. 313. The counts were similar to those in the preceding case—and Lord Kenyon having given an opinion, that the first count was sufficiently proved, directed the jury to find accordingly.—A bill of exceptions was tendered.—On the other counts a verdict was found for the defendant. The only facts necessary to be adverted to are the order to ships to seize and bring in ships of the United States, dated in February—the commission to the defendants, dated the 19th June—the sending in from St. Helena in July—the loss of some of the vessels previous to the 15th September—that, on the 15th September, general letters of marque were issued against the United States, subsequent to which the loss took place of another of the vessels, (the Zeelelye)—and that, on the 10th October, a commission issued to the Court of Admiralty to proceed to the adjudication of such ships, of which possession had been or should be taken by the commissioners, reserving to the commissioners the sole disposition and management thereof. In the Exchequer Chamber, the judges were (except Chambre, J.) of opinion, that the plaintiffs had an insurable interest as trustees under the commission, which was not varied by the subsequent declaration of hostilities and the new commission issued thereon. The judgment being affirmed, upon appeal to the House of Lords, the nature of insurable interests was very fully examined, both in the printed cases and in the opinion of the Judges. Several important questions were put to the Judges, which, with their answers, fully appear in the report. Upon the question, whether the plaintiff had an insurable interest, Graham, B. Le Blanc, J. Rooke, J. Grose, J. Heath, J. Mr. Donald, C. B. and Mansfield, C. J. concurred in the affirmative as to all the ships, and Thomson as to all except the Zeelelye—the loss of which did not happen till after the Proclamation of Reprisals. Chambre, J. and Lawrence, J. answered in the negative, principally on the ground, that the commission was only to take care of the property after its arrival in England; and that, if till then they had not any power to interfere with it, they could not be said, at the time of the sailing and loss, to have been interested. The following extract, from the opinion of Lawrence, J. seems to throw a very considerable light on the general question as to the nature of insurable interests:—"That a man must somehow or other be interested in the preservation of the subject matter exposed to perils, follows from the nature of the contract, when not used as a wager, but as applicable to the purposes for which it was originally introduced; but to confine it to the protection of the interest which arises out of property, is adding a restriction to the contract which does not arise out of its nature. A man is interested in a thing, to whom advantage may arise or prejudice happen, from the circumstances which may attend it, *in quantum mea interfuit*, i. e. *quantum michi abest quantumque lucrari potui*—*Dig. lib.* 46, *tit.* 8, *l.* 13; and whence it importeth, that its condition, as to safety or other quality, should continue. Interest does not necessarily imply a right to the whole or a part of the thing, nor necessarily and exclusively that which may be the subject of privation, but

to be laden on board of such ship, and shall be so expressed in the condition of the bond; and the benefit of salvage shall be allowed to the lender his agents or assigns who alone shall have a right to make assurance on the money so lent; and no borrower of money on bottom-ree or at respondentia as aforesaid shall recover more on any assurance than the value of his interest on the ship, or in the merchandizes or effects laden on board of such ship, exclusive of the money so borrowed; and in case

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the having some relation to or concern in the subject of the insurance, which relation or concern, by the happening of the perils insured against, may be so affected as to produce a damage, detriment, or prejudice to the person insuring; and where a man is so circumstanced, with respect to matters exposed to certain risks or dangers, as to have a moral certainty of advantage or benefit, but for those risks or dangers, he may be said to be interested in the safety of the thing. To be interested in the preservation of a thing is to be so circumstanced, with respect to it, as to have benefit from its existence, or prejudice from its destruction. The property of a thing, and the interest derivable from it, may be very different; of the first, the price is generally the measure—but by interest in a thing, every benefit and advantage arising out of or depending upon such thing, may be considered as comprehended." All the Judges agreed, that the question could not be considered as a policy on the profits which the commissioners were to receive from their employment, being declared upon as a policy upon the plaintiff's interest in the ships. Lord Eldon took a very full view of the circumstances of the particular case, and said, that if he were bound then to state his opinion judicially, he should be obliged very strongly to say, that the claims of the plaintiffs could not be supported; but said, he was sure it could not be supported as to the Zeelelye, which he thought the plaintiffs could not have taken into their possession as commissioners, although the King, after the declaration of hostilities, had made them his agents; and, as entire damages had been given, he suggested, that it would be proper to award a *venire de novo*, that the whole record would be then carried down, and the case would be open, and all the different interests which were averred in the other counts. Lord Ellenborough and the Lord Chancellor (Erskine) concurring in this view of the subject, a *venire de novo* was awarded accordingly; and, in Cousins *v.* Nantes, 3 Taunt. 515. the Court declared, that the only question in Lucena *v.* Crawfurd was, whether the decision of the Court, which was worded in a particular way, contained such an averment of interest as would support the judgment of the Court below. Upon the second trial of Lucena *v.* Crawfurd, a verdict was found for the plaintiff, on the count alleging an interest in the Crown. A bill of exceptions was tendered to Lord Ellenborough's direction, as to the Crown having a sufficient interest, and also as to the insurance being made on behalf of, or adopted by the Crown; but the judgment for the plaintiff was affirmed in the House of Lords, 1 Taunt. 325. In a second case of Routh *v.* Thompson, 13 East. 274. it was ruled, that the Crown had an insurable interest in Danish vessels, seized under an Order of Council, made previous to the commencement of hostilities. As to the adoption of such insurance, *vide post*.

Before quitting this case, I think it not wholly irrelevant to advert to the opinions expressed with regard to the conduct of the underwriters in resisting the demand, as affording some confirmation of the remarks made in a former Number of the want of fairness, which is frequently manifested in resisting demands upon policies of insurance upon strictly legal objections. Lord Kenyon, in Crawford *v.* Hunter—"The underwriters, knowing what kind of interest the plaintiffs had in the property, took the premium, considering them as having a right to make the insurance, and, when the loss happened, they refused to pay what they had engaged to pay, pretending that the plaintiffs had no right to make the insurance. Unconscientious, however, as the objection made by the defendant may be, if it be a legal objection, he has a right to insist upon it in a court of law." Chambre, J. in Lucena *v.* Crawfurd—"So far as respects the parties in dispute, I certainly shall not regret that my opinion is overruled, as I do not see upon what honourable principle the performance of the contract is resisted by the defendants who have not been deceived, but have made their contract with full knowledge of all the circumstances of the case." Lord Eldon—"With respect to the conduct of the underwriters I have said nothing. Courts of justice have no right to tell men whether they have acted honestly or dishonestly. It is the duty of a court to say whether they have acted legally. To that consideration I have entirely confined myself." I should not have thought it requisite to have cited these observations if they only bore upon the conduct of the individual underwriters in this particular case. But numerous as the subscriptions to the policies in question must have been, the importance of the consideration arises from what may be regarded (so far as appears from the cases that come before the public) a systematic principle of conduct which is allowed to operate to so great an extent, without the fear of censure or reproach, in opposition to the plain and obvious dictates of justice and integrity.

It was admitted in the discussion of Lucena *v.* Crawfurd, that a mere expectation, without interest, such as that of the next of kin of a lunatic, cannot be the subject of insurance.

The following cases have occurred with respect to the degree and kind of interest which are requisite when the subject is in its nature insurable. Hibbert *v.* Carter, 1 T. R. 745. The person on whose behalf the insurance was made, had, after the consignment and before the insurance, indorsed the bill of lading to a person to whom he owed an arrear of interest. This was at first con-

No. V. 19 Geo. II. c. 37.

it shall appear that the value of his share in the ship or in the merchandizes or effects laden on board doth not amount to the full sum or sums he hath borrowed as aforesaid, such borrower shall be responsible to the lender for so much of the money borrowed as he hath not laid out on the ship or merchandizes laden thereon with lawful interest for the same, together with the assurance and all other charges thereon in the propor-

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sidered as absolutely passing the property and defeating the insurance, but it afterwards appearing that the indorsee of the bill of lading was only intended to receive the net proceeds, and that the amount of the goods had been accounted for to the indorsee after the loss, a new rule was granted whereon the plaintiff recovered. In this case it is evident from the circumstances, that the indorsement was merely by way of giving the goods as a pledge and not as a transfer by way of sale, and in such case the risk of loss remains with the debtor giving the pledge and not with the creditor receiving it; and it seems clear that the creditor has an interest in insuring for the security of his pledge, the debtor in respect of his liability in case of the pledge becoming insufficient, and that either party may receive on the whole amount of his policy. As to contribution between the insurers, (see Gooin *v.* London Insurance Company, 1 Burr. 489.) a consignment was made to Dubois and Son, and the bills of lading indorsed to them. They were directed to hold a certain proportion for the plaintiff, a creditor of the consignor. It was ruled, that the plaintiff had an insurable interest—that the consignees were to be considered as trustees for him from the time the goods were shipped—that the being a creditor raised a good consideration—see Hill *v.* Secretan, 1 B. & P. 315. In Wolfe *v.* Horncastle, 1 B. & P. 316, Lund consigned to the Cudbear Company, and sent the bills of lading to the plaintiffs, his general agents, to deliver to the Cudbear Company, drawing upon them in favour of the plaintiffs to whom he was indebted for 1102*l.* and drew a bill upon the plaintiffs for 300*l.* which they accepted. The Cudbear Company refused to take the cargo or to accept the bill, whereupon the plaintiffs caused an insurance to be effected; and it was ruled, that they had an insurable interest for the 300*l.* for which they were interested in the goods: (Qu. if this interest was not to the whole amount for which they were to receive satisfaction out of the cargo. The observation, as to the amount of the interest, was only incidental, and no point in the cause.) Buller, J. said, "it is contended that they are without interest, because they had only a debt against Lund. I agree that a debt, which has no reference to the article insured, and which cannot make a lien on it, will not make an insurable interest. But a debt which arises in consequence of the article insured, and which would have given a lien on it does give an insurable interest, the plaintiffs having advanced their money on the security of the bills of lading and policy, must, if the goods had arrived, have received 300*l.* out of them; being lost, the insurance stands in the place of them, and the plaintiffs are entitled to receive that sum under policy." Heath, J.—"It is true, that if the Cudbear Company had altered their minds and taken to the cargo, that the plaintiffs would have had no interest, but if they had a contingent and reasonable expectation of interest it was sufficient." This observation was referred to with approbation in the cases of Lucena *v.* Crawfurd, and Stirling *v.* Vaughan, cited *supra*.

Another point in this case arose upon an objection, ruled to be unfounded, taken upon Stat. 28, Geo. III. *infra*. but which is here only referred to on account of the following remarks by Buller —"The ship sailed on her voyage—the premium was paid—it was a real *bona fide* transaction—no fraud has been suggested—a loss has happened, and the underwriter now chooses to say that for want of a strict compliance with the 28th Geo. III. he shall be excused from paying the money. *Time was when no underwriter would have dreamed of making such an objection; if the solicitor had suggested a loop-hole by which he might escape, he would have spurned at the idea. He would have said, Is it not a fair policy? Have I not received the premium? And shall I not now, when the loss has happened, pay the money? This would have been his answer, and he would have immediately ordered his broker to settle the loss.* As to the commencement of the plaintiff's interest, in Rhind *v.* Wilkinson, 2 Taunt. 237, it was said by the Court of Common Pleas, that if the declaration had averred that the plaintiff was interested at the time of the commencement of the ship's sailing, or that the policy was made on a certain day, and that afterwards on a subsequent day the plaintiff acquired an interest, it would have sufficed; and, if that would have been good, the allegation of interest at the time of effecting the policy was an immaterial allegation, and need not be proved. It was immaterial to aver interest at any day previous to the commencement of the risk. It is every day's practice to insure goods on a certain voyage, being before the goods are bought." The above opinion is noticed here on account of the observations as to the time at which it is necessary that the interest should attach; but the opinion must be considered in a great measure as extrajudicial, the judgment being in favour of the defendant upon a collateral point; and the question, as to the necessity of proving the allegation actually made, (whether material or otherwise) of interest at the time of effecting the insurances, may perhaps admit of further consideration.

The following cases have been decided with respect to the character of the agent by whom the insurance is effected, as connected with the interest of the principal. In the above-mentioned case of Wolfe *v.* Horncastle, the question on the first count turned upon the averment, that the insurance was effected by the plaintiffs as the agents of Lund. It appeared that they were his general agents, that the bills of lading were transmitted to them to be handed over to the Cud-

No. V.
19 Geo. II. c. 37.

tion the money not laid out shall bear to the whole money lent, notwithstanding the ship and merchandizes be totally lost.

VI. And be it further enacted by the authority aforesaid, That in all actions or suits brought or commenced after the said first day of *August* by the assured upon any policy of assurance, the plaintiff in such action or suit, or his attorney or agent, shall within fifteen days after he or they shall be required so to do in writing by the defendant, or his attorney or agent, declare in writing what sum or sums he hath assured or caused to be assured in the whole, and what sums he hath borrowed at respondentia or bottomree for the voyage or any part of the voyage in question in such suit or action.

In all Actions Plaintiff to declare within fifteen days what Sums he hath assured.

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bear Company, who repudiated the consignment, whereupon plaintiffs effected the insurance without any order to do so, and immediately wrote to advise Lund thereof, who returned an answer, expressing his approbation; and it was ruled, that this was a sufficient agency, and also that it satisfied the description of the plaintiffs as persons receiving the order to insure within Stat. 28 Geo. III.; and per Buller, J.—"It is agreed, that a general agent has a right to exercise his discretion for the benefit of his principal, he must act upon the spur of the occasion, and if nothing else had passed, I have doubts whether the consignor would not have been liable to pay the premiums. But the plaintiffs take the opportunity to inform the consignor of their having made their insurance, and he highly approves of their acts, which bring the case within the maxim that *omnis ratihabitio mandato æquiparatur.*" In the second case of Lucena *v.* Crawfurd, 1 Taunt. 325, a letter to the Dutch Commissioners from the Secretary of the Treasury, by order of the Board, on the same day on which the insurance was effected, intimating their opinion that it would be prudent to insure, and desiring them to take the necessary steps accordingly, was contended not to be sufficient to shew an authority to make the insurance in the name or on the behalf of the Crown, or as a ratification of such insurance; but the judgment for the original plaintiffs (the defendants in error) was affirmed without calling upon them to answer the objections. In Stirling *v.* Vaughan, 11 East. 619, (decided upon another point already mentioned,) upon its being said, that the insurance made by the direction of the captors for the benefit of all concerned, might be considered as made under an implied authority to insure for the Crown. Lord Ellenborough said, "The law will presume, if nothing appear to the contrary, that every person accepts that which is for their benefit. And here it is for the benefit of the Crown to preserve the prize, if it were only for the purpose of securing to the captors the reward which its bounty provided for them in the event of condemnation.

Upon a second case of Routh *v.* Thompson, respecting Danish vessels seized by virtue of an Order of Council, the prize agent having directed an insurance directing the plaintiff to do the best for the concerned, it having been ruled, that the Crown had an insurable interest in the subject, it was further held, that an Order of Council, subsequent to the loss, adopting and approving of the insurance, and authorizing the assured to sue for his Majesty's use, was sufficient to entitle the plaintiff to recover—13 East. 274.

In Hagedorn *v.* Oliverson, 2 M. & S. 485, the plaintiff who was employed to obtain a license for a ship to proceed with a cargo from certain limits to Great Britain, effected, without any directions, an insurance on the ship on behalf of all such persons to whom the same might belong. The only evidence of a recognition of his authority to make such insurance was a letter from the owner two years after the loss, expressing a hope that he had settled with the underwriters, and this was held sufficient. Lord Ellenborough said, that the plaintiff had a right to effect an insurance on the chance of its being adopted for the benefit of all those to whom it might appertain, which are the words of the policy. He might insure for those who were actually interested, and possibly for those who might be interested. The owner was interested, and might become privy to the benefit of the insurance by subsequent adoption. He had adopted it, and it is made a question whether he can become privy to the benefit of it. It appears to me, upon the authorities of Lucena *v.* Crawfurd, and Routh *v.* Thompson, that he may. The other Judges expressed their opinions to the same effect.

It is settled that a valued policy is not objectionable, although the value stipulated may exceed the amount of actual interest, provided the valuation is not a mere cover for a wager, as (to use the expression of Lord Mansfield) if a person who insures for £2000 has interest only to the value of a cable—see the subject fully discussed in Lewis *v.* Rucker, 2 Bur. 1171. The valuation does not raise a mere presumption which may be repelled by evidence, but the insurers are liable for the full amount in a case not amounting to a colourable wager, although they may prove an over valuation,—see Le Pypre *v.* Fazor, in Dom. Proc. 253,—M'Nayr *v.* Coulter, *id.* 255.

No interest can be averred in a ship contrary to the provisions of the Register Acts—See Camden *v.* Anderson, 5 T. R. 509; but the Register alone is not sufficient proof of property or interest—Pirie *v.* Anderson, 4 Taunt. 652. An averment that two parties were interested is not disproved by evidence that previous to the insurance they had admitted a third—Page *v.* Fry, 2 B. & P. 40. But an averment that the policy was made for one joint owner, and that

No. V. 19 Geo. II. c. 37.

VII. 'And whereas it is unreasonable that any person or persons body 'or bodies corporate subscribing sealing or otherwise executing any policy 'or policies of assurance should be put to any costs charges or expences 'in any suit or action at law to be brought on such policy or policies in 'case such person or persons body or bodies corporate is or are ready and 'willing to pay such damages and costs as shall and may be really and '*bona fide* due thereon, which at present they are liable to and often 'forced unjustly to bear, for that in many cases upon such policies no 'money can be brought into Court:' For remedy whereof, be it enacted by the authority aforesaid, That from and after the said first day of *August* it shall and may be lawful for any person or persons body or bodies corporate, sued in any action or actions of debt covenant or any other action or actions on any policy or policies of assurance, to bring into Court any sum or sums of money; and if any such plaintiff or plaintiffs shall refuse to accept such sum or sums of money so brought into Court as aforesaid, with costs to be taxed in full discharge of such action or actions, and shall afterwards proceed to trial in such action or actions, and the jury shall not assess damages to such plaintiff or plaintiffs exceeding the sum or sums of money so brought into Court, such plaintiff or plaintiffs in every such case and cases shall pay to such defendant or defendants in every such action and actions, costs to be taxed; any law custom or usage to the contrary notwithstanding.

Persons sued on Policies of Assurance to bring the Money into Court; Plaintiff not accepting it, and Jury not assessing greater Damages, to pay Costs.

Limitations of this Act.

VIII. Provided always, and it is hereby declared, That this Act shall not extend to or be in force against any persons residing in any parts or places in *Europe* out of his Majesty's dominions for whose account any assurance or assurances shall be made before the twenty-ninth day of *September* in the year of our Lord one thousand seven hundred and forty-six, nor extend to or be in force against any persons residing in any parts or places in *Turkey* or in *Asia Africa* or *America*, for whose account any assurance or assurances shall be made before the twenty-fifth day of *March* in the year of our Lord one thousand seven hundred and forty-seven; any thing herein contained to the contrary thereof in anywise notwithstanding.

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he was interested in the subject insured, cannot be sustained, if it appear that the policy was effected on the joint account of himself and the other owner—Ball *v.* Ansley, 16 E 141.

In the first case of Routh *v.* Thompson, above stated, 11 E. 428, the Court, after deciding that the captors of a Danish ship, brought in under an Order of Council, had no insurable interest, held, that as there was no fraud in the captors in effecting the policy, as there was no illegality in the voyage or insurance, and as the resistance of the underwriters to the claims on the policy proceeded upon the ground that there was no risk, the plaintiff was intitled to a return of his premium. As to return of premium on mere wager policies, see Lowry *v.* Bourdieu, Doug. 468.

(4.) This extends to re-assurance on foreign ships. The person effecting the re-assurance is not intitled to a return of premium, the insurer having succeeded in resisting the payments of a loss on account of the illegality of the contract—Audice *v.* Fletcher, 2 T. R. 161. A re-assurance differs from a double assurance, the former being effected by the insurer to transfer his responsibility, the latter by the assured to increase his security.

[No. VI.] 14 George III. c. 48.—An Act for regulating Insurances upon Lives, and for prohibiting all such Insurances, except in Cases where the Persons insuring shall have an Interest in the Life or Death of the Persons insured.

14 Geo. III. c. 48.

'WHEREAS it hath been found by experience that the making insu- 'rances on lives or other events wherein the assured shall have no 'interest, hath introduced a mischievous kind of gaming:' For remedy whereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in the present Parliament assembled, and by the authority of the same, That from and after the passing of this Act no insurance shall be made by any person or persons, bodies politick or corporate on the life or

No Insurance to be made having no Interest, &c.

lives of any person or persons or on any other event (1.) or events whatsoever, wherein the person or persons for whose use benefit or on whose account such policy or policies shall be made, shall have no interest or by way of gaming or wagering; and that every assurance made contrary to the true intent and meaning hereof shall be null and void to all intents and purposes whatsoever.

No Policies without inserting Names, &c.

II. And be it further enacted, That it shall not be lawful to make any policy or policies on the life or lives of any person or persons or other event or events without inserting in such policy or policies the person or persons name or names interested therein, or for whose use benefit or on whose account such policy is so made or underwrote.

How much may be recovered.

III. And be it further enacted, That in all cases where the insured hath interest in such life or lives event or events no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives or other event or events.(2.)

Not to extend to Ships, &c.

IV. Provided always, That nothing herein contained shall extend or be construed to extend to insurances *bona fide* made by any person or persons on ships goods or merchandizes; but every such insurance shall be as valid and effectual in the law as if this Act had not been made.

(1.) A policy on the sex of a person was ruled to be within this prohibition.—Da Costa *v.* Jones, Cowp. 729. In Good *v.* Elliott, 3 T. R. 693. Buller, J. maintained, that all wagers upon subjects, in which the parties had no interest, were within the Act, but ruled contra by the other judges.

(2.) A creditor may insure the life of a debtor; but being a contract of indemnity, if the debt is in any way paid, the assured cannot recover on the policy—ruled in the case of an insurance on the life of Mr. Pitt, whose debts were paid by parliament—Godsal *v.* Boldero, 9 E. 72.

[No. VII.] 25 George III. c. 44.—An Act for regulating Insurances on Ships, and on Goods, Merchandizes or Effects.

25 Geo. III. c. 44.

'WHEREAS it hath been found by experience, that the making or effecting insurances on ships or vessels and on goods merchandizes and effects in blank, and without specifying therein the name or names of any person or persons for whose use and benefit or on whose account such insurances are made or effected, hath been in many respects mischievous and productive of great inconveniences;' for remedy whereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same,

No Policy of Insurance on Ships or Goods to be made without inserting the Names of the Persons interested, &c.

That from and after the fifth day of *July* one thousand seven hundred and eighty-five, it shall not be lawful for any person or persons who shall live or reside in *Great Britain* to make or cause to be made any policy or policies of assurance upon his her or their interest in any ship or ships vessel or vessels, or on any goods merchandizes effects or other property, without inserting in such policy or policies his her or their own name or names as the person or persons interested therein, or the name or names of the person or persons who shall effect the same, as the agent or agents of the person or persons so really interested therein, or for whose use or benefit or on whose account such policy or policies is or are so made or underwrote; and that it shall not be lawful from and after the said fifth day of *July* one thousand seven hundred and eighty-five, for any person or persons who shall not live or reside in *Great Britain* to make or cause to be made any policy or policies of assurance upon his her or their interest in any ship or ships vessel or vessels or on any goods merchandizes effects or other property, without inserting in such policy or policies the name or names of the agent or agents of the person or persons so really

No. VII. 25 Geo. III. c. 44.

interested therein, or for whose use or benefit or on whose account the same is or are so made or underwrote; and that every policy or policies of assurance made or underwrote contrary to the true intent and meaning hereof, shall be null and void to all intents and purposes whatsoever. (3.)

Policies made contrary, void.

(3.) See Cox *v.* Parry, 1 T. R. 469.—It has been thought eligible to insert this Act, although repealed by the following Number.

[No. VIII.] 28 George III. c. 56.—An Act to repeal an Act, made in the Twenty-fifth Year of the Reign of his present Majesty, intituled, *An Act for regulating Insurances on Ships, and on Goods, Merchandizes, or Effects;* and for substituting other Provisions, for the like Purpose, in lieu thereof.

28 Geo. III. c. 56.

Preamble.

25 Geo. III. c. 44.

'WHEREAS it hath been found by experience that great mischiefs and inconveniencies have arisen to persons interested in ships or vessels, and also to persons using trade or commerce from the effect of an Act made in the twenty-fifth year of the reign of his present Majesty, intituled *An Act for regulating Insurances on Ships and on Goods Merchandizes or effects:* And whereas it is highly expedient that other and more convenient provisions should be made for the regulating insurances hereafter to be made on ships and on goods merchandizes or effects than those which are contained and enacted in and by the said Act;' be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same,

repealed; and no Policy to be made on any Ship, &c. without inserting thereon the Name or Names, or the Firm of Dealing of one or more of the Persons interested, &c.

That the said Act made in the twenty-fifth year of the reign of his present Majesty shall be, and the same is hereby repealed; and that from and after the passing of this Act it shall not be lawful for any person or persons to make or effect or cause to be made or effected any policy or policies of assurance upon any ship or ships vessel or vessels or upon any goods merchandizes effects or other property whatsoever without first inserting or causing to be inserted in such policy or policies of assurance the name or names, or the usual style and firm of dealing of one or more of the persons interested in such insurance or without instead thereof first inserting or causing to be inserted in such policy or policies of assurance the name or names of the usual style and firm of dealing of the consignor or consignors consignee or consignees of the goods merchandizes effects or property so to be insured; or the name or names or the usual style and firm of dealing of the person or persons residing in *Great Britain*, who shall receive the order for and effect such policy or policies of assurance or of the person or persons who shall give the order or direction to the agent or agents immediately employed to negociate or effect such policy or policies of assurance.

Policies made contrary to this Act to be void.

II. And be it further enacted by the authority aforesaid, That every policy and policies of assurance made or underwrote contrary to the true intent and meaning of this Act shall be null and void to all intents and purposes whatsoever. (1.)

(1.) For the occasion and reasons for passing this Act, and 25th Geo. III. c. 44, see the observations of Buller, J. in Wolfe *v.* Horncastle, 1 B. & P. 316—Bell *v.* Gibson, *id.* 345. In the first of these cases it was held, that the Act was sufficiently complied with, in a case where A consigned goods to B, drawing bills upon B in favour of C, the general agent of A, and transmitted the bills of lading to C, with directions to hand them over to B, that he might have an opportunity to insure, and also drew a bill on C, which was accepted and paid: B having refused to accept the bills or take to the cargo, C effected the insurance in his own name, which he communicated to A, who expressed his approbation. For the animadversions of Buller, J. on the conduct of the underwriter, see note 2, to No. 5, *supra*. In the later case it was held sufficient that the broker for the plaintiff, who effected the policy, was therein called *agent*, without stating

for whom; and in De Vignier *v.* Swanison, *n. ibid*, it was held to be sufficient, that the persons effecting the policy were averred in the declaration to be agents, not being described as such in the policy. Where the plaintiff, whose name was on the policy, and who gave the order to insure, did so without authority, but the person on whose behalf the insurance was made afterwards ratified it, it was held sufficient, the plaintiff being the person who gave the order.—Hagedorn *v.* Oliverson, 2 M. & S. 485. But where the declaration averred, that the plaintiff *received the order* for and effected the insurance, it was held to be a material averment—and that a previous order must be shewn, and a subsequent adoption, was not sufficient, although perhaps the declaration might have been good without the averment.—Bell *v.* Johnson, 1 M. & S. 201. In Mellish *v.* Bell, 15 E. 4, it was ruled, that a declaration that the plaintiffs, M & N, caused a policy to be effected, averring that Messrs. John Gore & Co. did make assurance, was good after verdict. Per Lord Ellenborough—"The Act requires that the persons making the insurance should fall within one or other of the descriptions therein mentioned, but not that they should be described as such *ex nomine* in the policy." Le Blanc, J.—"The only question is, whether it should be stated upon the record that Gore & Co. are mere names, or whether it may be shewn by evidence."

PART III.

CLASS IV.

*Bills of Exchange and Promissory Notes.**

[No. I.] 9 & 10 William III. c. 17.—An Act for the Payment of Inland Bills of Exchange.

9 & 10 W. III. c. 17. 'WHEREAS great damages and other inconveniencies do frequently 'happen in the course of trade and commerce, by reason of delays of 'payment and other neglects on inland bills of exchange in this kingdom;' be it therefore enacted by the King's most excellent Majesty, by and with

* Considering the utility of Bills of Exchange and Promissory Notes, while applied to their proper and legitimate purposes on the one hand, and the mischief which frequently arises from the abuse of them on the other, there are few subjects in the compass of the law which are of more extensive practical importance than the duly regulating these contracts, and the defining with accuracy and precision the several rights and obligations resulting from them. And, in relation to their peculiar transferrable quality, I think it is highly desirable that their character and incidents should, as much as possible, appear upon the face of the instruments themselves and not be affected by collateral enquiries, except so far as regards the particular individuals between whom the immediate transaction, which is the subject of enquiry, should have taken place; and, with this view, I have taken the liberty of suggesting the following legislative regulation:

1. In the first place, I think that the character of a Bill of Exchange, as distinguished from that of a Promissory Note, should be so distinctly marked, that there may be no hazard of misleading even those who may be ignorant or inattentive, by making the latter assume the semblance of the former. A deception upon this subject is often practised by inserting the name of some great commercial house on that part of the paper at which the name of a drawee of a Bill of Exchange is usually placed; and sometimes inserting and at other times omitting the word *I* before the direction to pay, and placing the word *at* generally in an indistinct manner above the name of the house at which the instrument professes to be payable; and many persons are deluded by taking those instruments as bills drawn upon such house, which is not the case when the word *I* is inserted. I apprehend that the law is not settled as to the character of the instrument when that word is omitted; and it seems desirable to enact, generally, that in all cases, when a sum of money is made payable to any person or persons or their order, or to the bearer, payable at the house of any other person or persons named in such instrument, the same shall to all intents and purposes be taken in a bill of exchange, drawn upon the persons at whose house it is so made payable, unless the words *promise to pay* shall be inserted in the body of such instrument.

2. In pursuance of the same principles, I think it would be eligible to provide against ambiguity with respect to the acceptance of bills, and for that purpose to do away with all acceptances by parol or collateral undertaking; and to provide that nothing be deemed an acceptance, except the word *accepted* be written on the instrument itself, saving to all parties to whom a promise of acceptance may be made their right of action for the non-performance of such promise.

3. As the law at present stands, an action may be brought against the acceptor of a bill, or the holder of a note, without any previous presentment or demand of payment. This is founded upon the unmeaning maxim, that an action is a demand—whereas, in the nature of the thing, a right of action supposes a previous default. When the obligation is in itself perfect and entire,—such as the discharge of a bill for goods sold,—it would be repugnant to hold, that any additional circumstance should be necessary to maintain an action for the non-performance of it; but the real nature of the undertaking of an acceptor of a bill is to pay the amount upon its being presented; and great abuse may arise from allowing him to be arrested, and subjected to the costs of an action, for not discovering the accidental holder and paying the amount at his peril. This would be obviated by the mere provision, that no action should be maintained against the acceptor of a bill, or the holder of a note, without a previous presentment and demand of payment.

4. I think that, with reference to the general interests of the community, the balance of convenience is greatly in favour of permitting the holder of a bill, fairly received in the course of business, to enjoy the full benefit of it, according to its apparent efficacy, without being affected by

No. I.
9 & 10
W. III. c. 17.
Bills of Exchange drawn in England, &c. of 5*l.* or upwards, payable at a certain Number of Days, &c. after Acceptance and three Days after it is due, may be protested.

the advice and consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same, That from and after the four-and-twentieth day of *June* next which shall be in the year one thousand six hundred ninety-eight, all and every bill or bills of exchange drawn in or dated at and from any trading city or town or any other place in the Kingdom of *England* dominion of *Wales* or town of *Berwick-upon-Tweed*, of the sum of five pounds sterling

any collateral circumstances, such as gaming and usury in its original formation, or bankruptcy of the drawer or payee. Desirable as it may in fact be, to prevent excess in gaming,—or as for the purpose of the argument it must be supposed to be to discountenance usury, or to assist the general creditors of a bankrupt,—it is infinitely more desirable, that no person shall be protected in practising a fraud on the public, by holding out, as a substantial agreement, an undertaking which is of no legal efficacy. When the immediate attention of the legislator is confined to a particular object, such as the practice of gaming or usury, or the making provision for creditors, every other consideration becomes naturally subordinate to the principal design; but the true principle of legislation in this, as in all other instances, requires an attentive examination of the general balance between opposite advantages and inconveniences; and the interests of justice will give the preponderance in favour of those who are wholly unconnected with the prohibited transaction, and would be subjected to loss and detriment, by giving credit without any imputation of negligence to the apparent obligation of a legal document, rather than of those who, however fully they may be intitled to protection against the parties with whom they have agreeably engaged, have been instrumental in obtaining credit to the apparent security. The protection of the law is given to the fair holder, in case of want of consideration, fraud or general illegality in the original structure of the bill, or in case of its having been subsequently lost or stolen, and there does not appear to be any adequate cause of public utility for making an exception in the particular cases at present adverted to. The obligation should, however, be subject to recourse for repayment against those, who, if they had continued to be holders of the securities, would not have been allowed by the policy of the law to have made them available, on account of their own privity to the illegal transaction, but have given efficacy to the instruments, and raised, by their transfer to others, an obligation which would not have subsisted in favour of themselves.

5. According to the nature and legal character of the contract, the engagement of the drawer and indorser of a Bill is to be accountable for the amount, in case of due presentment being made, and of due notice given, of the dishonour; and in case a contract was entered into, that in its terms expressed the condition, which by the nature of this engagement is implied, the performance of such condition would be a necessary preliminary to the right of action—and it would be no excuse to say, that the compliance with the condition would have been attended with no advantage to the party insisting upon it. The immediate reply would be *non hæc in fœdera veni*. But by a series of judicial determinations such an exception has been extended to the case of a drawer having no effects in the hands of the drawee—and in some instances, the exception has been extended to the indorser having notice that the instrument was of that kind which is popularly termed an accommodation transaction, although in others it has been held, that a person giving security, by indorsing a Bill, intended to enter into an engagement agreeably to the nature of the instrument, and to stipulate for a compliance with the incidental requisites. In the first case upon the subject, Bickerdike *v.* Bolman, 1 T. R. 405. the Bill had not been accepted—and the case was put on the ground of the drawing such a Bill upon a person who had no effects, being a fraud; and I have heard Mr. Justice Chambre, who argued the case, express a doubt, whether the doctrine extended to Bills accepted—but no such doubt can be entertained as the law is now settled. Lord Eldon has observed, that the inconveniences, which had resulted from establishing the rule, could only be equalled by those of departing from it when established; meaning I conceive only to refer to the inconveniences of rescinding the existing practice by mere judicial authority, and not to those which would attach in respect of the nature of the subject, from an interposition of the legislature. There is, doubtless, much inconvenience from involving a contract, the advantage of which is in a great degree dependant upon its plainness and simplicity, in a perplexed inquiry as to accidental matters. The person who receives a Bill is aware, that the general validity of the obligation, against all parties except the acceptor, depends upon his complying with the conditions attached to the nature of the contract, and neglects complying with those conditions, upon the mere hazard and speculation of being able, by accidental circumstances, to bring himself within the scope of the exception. An examination of the mere question of compliance or noncompliance with the rule is plain and obvious—the examination of the alleged exception, intricate and embarrassing; and I apprehend, that the general convenience would be best consulted by requiring a strict compliance with the legal requisites of the engagement.

6. Considering the necessity which sometimes prevails, with respect to the proper time for giving notice of dishonour, I conceive that it would be most beneficial to lay down a certain and uniform rule, the compliance with which would in general be of great facility—and perhaps a provision, that

No. I. 9 & 10 W. III. c. 17.

or upwards upon any person or persons of or in *London* or any other trading city town or any other place (in which said bill or bills of exchange shall be acknowledged and expressed the said value to be received) and is and shall be drawn payable at a certain number of days weeks or months after date thereof, (1.) that from and after presentation and acceptance of the said bill or bills of exchange (which acceptance shall be

notice in writing shall be personally given, or left at the dwelling-house or place of business of the person charged, or sent by post on the day following the day of the dishonour, or the notice thereof, (in case of that day falling on a Sunday or great holiday) would answer all purposes of general convenience.

7. I apprehend the law to be, that if notice is given by regular stages from each of the persons through whose hands the Bill has passed, the ultimate holder is entitled to recover against the drawer or any intermediate party, having received such notice in his regular turn—but if there has been an omission in any of the stages, the holder cannot in general recover. In Bateman *v.* Joseph, 12 E. 433. the notice was dispensed with, on the ground of its being proved, that the plaintiff did not know the defendant's residence, Lord Ellenborough, having left it to the jury, whether he had used due diligence to find it; but the uncertainty of these inquiries, and of the notion which a jury may form as to what shall or shall not be considered due diligence, is in its nature very inconvenient. I think the most eligible course would be to require every holder to subjoin to his name a direction, to which notice, in case of dishonour, should be addressed, upon peril of being excluded from objecting the want of notice, except as against the party to whom he made the immediate transfer. A notice in the Gazette, as affecting persons not giving their designation, might in some respects remove the inconvenience —but, I conceive, would be generally felt as objectionable, on account of the detriment to which parties might be collaterally subjected in consequence of such an exposure.

8. The liability of an indorser, who has been discharged by want of due presentment or notice in consequence of a subsequent promise, is a subject to which I have heretofore, before the existing doctrine was firmly established, directed no inconsiderable share of attention, (Appendix to Pothier, No. 18;) feeling, that such liability being usually founded on a promise, induced by mere terror under a mistaken idea of legal obligation, was not supported by the principles of correct judicial reasoning, or founded upon any adequate consideration in point of law or moral expediency. The observation which I have made upon the kind of evidence usually given in the execution of such promises, does not much regard the subject in a more favourable point of view. The series of decisions which have taken place since my reasonings were submitted to the public, will no longer leave the question to be considered as open for any practical purpose, but subsequent reflection has rather confirmed than removed my original impressions, considering the matter on grounds of expedience and propriety, and as of sufficient importance for legislative interference. When an engagement is entered into upon an express condition, the failure of the condition induces the nullity of the engagement, and there is no reason, as I have already intimated, to adopt a different rule with respect to a condition attached to and inherent in the nature of the engagement, and the subsequent promises relate to a matter in which the party making them has ceased to have any interest or concern. Promises which have the effect of discharging the collateral exceptions founded upon infancy or the Statute of Limitations stand upon a very different footing from those which apply to a ground of defence affecting the very nature and substance of the original obligation. Upon a subject which has always appeared to me to be very analogous to that at present under discussion, the courts have adopted the principle which I have contended for, as founded upon the justice and rectitude of the case, it being settled that the signing off a loss on a policy of insurance is only evidence by way of acknowledgment that the obligation of indemnity has attached, and does not stop the party making such acknowledgment from shewing with effect the want of previous liability.

9. The proof of presentment, especially when the trial is at a distance from the place where it occurred, is attended with so much expence, that I conceive it would be beneficial, in all cases where the distance exceeded ten miles, to allow such proof to be made by the production of the protest, accompanied by an affidavit of the fact, made previously by a notary—but not to allow such affidavit from a clerk, on whose credit the notary often acts in giving his attestation to the protest. In admitting this alteration there would be little danger of the introduction of perjury—and perhaps the provision would be extended with advantage, by admitting similar proof of an official notification of the dishonour of the instrument.

10. The provision, by the statute of William, for supplying the loss of a Bill by the substitution of another, upon giving an indemnity, is too indistinct to be attended with much practical benefit. The regulation was borrowed from a subsisting practice in France, but there were facilities for giving it effect, in that country, which do not prevail according to the English law. There were consular judges exercising a summary jurisdiction in commercial cases, and no Bills were transferrable by general indorsement—the security therefore required was only against the Bill having been specially indorsed by the person alleging the loss, and no claim could be set up against it through the medium of robbery or accidental finding. As a sketch of a suitable provision upon the subject, I would suggest, that in case of a person having lost or been robbed of a Bill, it should be competent, within a given time, to

by the underwriting the same under the party's hand so accepting) and after the expiration (2) of three days after the said bill or bills shall become due, the party to whom the said bill or bills are made payable his servant agent or assigns may and shall cause the said bill or bills to be protested by a notary publick, and in default of such notary publick by any other substantial person of the city town or place in the presence of two or more credible witnesses refusal or neglect being first made of due payment of the same; which protest shall be made and written under a fair written copy of the said bill of exchange, in the words or form following:

'KNOW all men, that I *A. B.* on the day of
at the usual place of abode of the said
'have demanded payment of the bill of the which the above is the copy,
'which the said did not pay, wherefore I the said
'do hereby protest the said bill. Dated this day of

II. Which protest so made as aforesaid shall within fourteen days (3) after making thereof be sent, or otherwise due notice shall be given thereof to the party from whom the said bill or bills were received who is upon producing such protest to repay the said bill or bills together with all interest and charges from the day such bill or bills were protested; for which protest shall be paid a sum not exceeding the sum of sixpence; and in default or neglect of such protest made and sent or due notice given within the days before limited, the person so failing or neglecting thereof is and shall be liable to all costs (4.) damages and interest which do and shall accrue thereby.

Protest or Notice thereof to be given in fourteen Days after made, &c.

III. Provided nevertheless, That in case any such inland bill or bills of exchange shall happen to be lost or miscarried within the time before limited for payment of the same, then the drawer of the said bill or bills

Bill lost or miscarried, Drawer to give another.

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make affidavit of the fact, and give notice of such affidavit to the drawee—and also to insert a notification in the Gazette, that in case of a Bill being presented within a limited time, the party presenting it should be required to account for his title by affidavit—and for a proper person to be invested with a summary authority to decide upon the title to the Bill, or to direct an issue, as might be deemed expedient—and that upon non-production of the Bill within a limited time, for instance a month, the same remedies should be allowed as if the party having sustained the loss had had the actual possession. Proper provisions might be introduced for giving a regular notification to the preceding parties, in the same manner as if the Bill were forthcoming.

11. I think it would be a great addition to the benefit arising from Bills of Exchange and Promissory Notes, if the parties in case of default were rendered liable to an execution upon summary process, under the controul of a judge of the superior courts, with power to put any disputed question of law or fact into a proper course of examination. It would be a great check upon the random issue of accommodation paper, if parties were aware that their engagement extended to subject themselves to immediate execution in case of such default, whereas there is very little scruple in giving a mere signature, which has no other effect than driving the holder to a desperate and probably unproductive action. This summary remedy was established in the law of Scotland against the acceptor, and against the drawer and indorser, in case of non-acceptance, by an Act of 1681, and is extended to drawers and indorsers generally, by stat. 12 Geo. 3. c. 72. sec. 40. except where the indorsation is qualified to be without recourse. I apprehend that the provision has been found beneficial in its consequences, and that it would not be less so if adopted in England. To give effect to this and other summary proceedings, recommended in different parts of these notes, I am aware that some new arrangements would be requisite in the judicial establishment, upon which some general observations will be introduced in the second Number of the Appendix.

(1.) The Act does not apply to Bills made payable after sight.—Leftly *v.* Mills, 4 T. R. 170.

(2.) The protest cannot be made until the day after the Bill has become due—Bayley, 3 Ed. 123; the three days mentioned in the text are evidently the ordinary days of grace.

(3.) This notice is confessedly not sufficient to intitle the party to recover. The precise time within which notice must be given is not very accurately settled—but in no case is it sufficient, unless given the day after that of the Bill being dishonoured, or of receiving notice thereof.

(4.) These costs are only the costs of protesting—not the legal costs of an action, which are recovered of course. Protest of an inland Bill is only necessary for the purpose of recovering interest and expenses. Vide 2 B. & A. 696.

No. I. 9 & 10 W. III. c. 17.

is and shall be obliged to give another bill or bills of the same tenour with those first given, the person or persons to whom they are and shall be so delivered giving security if demanded to the said drawer to indemnify him against all persons whatsoever in case the said bill or bills of exchange so alleged to be lost or miscarried shall be found again. (4.)

(5.) See Walmesley *v.* Child, 1 Vesey, sen. 341—*ex parte* Greenway, 6 Ves. 812—Pierson *v.* Hutchinson, 2 Cowp. N. P. 211.

[No. II.] 3 & 4 Anne, c. 9.—An Act for giving like Remedy upon Promissory Notes, as is now used upon Bills of Exchange, and for the better Payment of Inland Bills of Exchange.

3 & 4 Anne, c. 9.

See 1 Bur. 227. 325. This Act (being for the Benefit of Commerce) is liberally construed. 3 Wils. 1.

'WHEREAS it hath been held, That notes in writing signed by the 'party who makes the same whereby such party promises to pay 'unto any other person or his order any sum of money therein mentioned 'are not assignable or indorsable over within the custom of merchants to 'any other person; and that such person to whom the sum of money 'mentioned in such note is payable cannot maintain an action by the 'custom of merchants against the person who first made and signed the 'same; and that any person to whom such note should be assigned 'indorsed or made payable could not within the said custom of mer-'chants maintain any action upon such note against the person who first drew and signed the same:' Therefore, to the intent to encourage trade and commerce which will be much advanced if such notes shall have the same effect as inland bills of exchange and shall be negociated in like manner; Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That all notes in writing that after the first day of *May* in the year of our Lord one thousand seven hundred and five, shall be made and signed by any person or persons body politick or corporate, or by the servant or agent of any corporation banker goldsmith merchant or trader who is usually intrusted by him her or them to sign such promissory notes for him her or them whereby such person or persons body politick and corporate his her or their servant or agent as aforesaid doth or shall promise to pay to any other person or persons body politick and corporate his her or their order or unto bearer any sum of money mentioned in such note shall be taken and construed to be by virtue thereof due and payable to any such person or persons body politick and corporate to whom the same is made payable; and also every such note payable to any person or persons body politick and corporate his her or their order shall be assignable or indorsable over in the same manner as inland bills of exchange are or may be according to the custom of merchants; and that the person or persons body politick and corporate to whom such sum of money is or shall be by such note made payable shall and may maintain an action for the same in such manner as he she or they might do upon any inland bill of exchange made or drawn according to the custom of merchants against the person or persons body politick and corporate who or whose servant or agent as aforesaid signed the same; and that any person or persons body politick and corporate to whom such note that is payable to any person or persons body politick and corporate his her or their order is indorsed or assigned or the money therein mentioned ordered to be paid by indorsement thereon shall and may maintain his her or their action for such sum of money either against the person or persons body politick and corporate who or whose servant or agent as aforesaid signed such note or against any of the persons that indorsed the same in like manner as in cases of inland bills of exchange; (1.)

Promissory Notes may be assigned or indorsed, and Action maintained thereon as on Inland Bills of Exchange.

(1.) As to the affinity between Bills of Exchange and Promissory Notes, see Heylin *v.* Anderson, 2 Bur. 669—Brown *v.* Harraden, 4 T. R. 148—Carlos *v.* Fancourt, 5 T. R. 482.

No. II.
3 & 4 Anne, c. 9.

And in every such action the plaintiff or plaintiffs shall recover his her or their damages and costs of suit; and if such plaintiff or plaintiffs shall be nonsuited or a verdict be given against him her or them, the defendant or defendants shall recover his her or their costs against the plaintiff or plaintiffs; and every such plaintiff or plaintiffs defendant or defendants respectively recovering may sue out execution for such damages and costs by *capias fieri facias* or *elegit*.

Plaintiff or Defendant may recover Costs.

II. And be it further enacted by the authority aforesaid, That all and every such actions shall be commenced sued and brought within such time as is appointed for commencing or suing actions upon the case by the statute made in the one-and-twentieth year of the reign of King *James* the First, intituled *An Act for Limitation of Actions, and for avoiding of Suits in Law.*

How Actions shall be brought. 21 Jac. 1. c. 16.

III. Provided, That no body politick or corporate shall have power by virtue of this Act to issue or give out any notes by themselves or their servants, other than such as they might have issued if this Act had never been made.

Proviso against giving out Notes.

IV. 'And whereas by an Act of Parliament made in the ninth year 'of the reign of his late Majesty King *William* the Third, intituled *An* 'Act for the better Payment of inland Bills of Exchange, it is among 'other things enacted, That from and after presentation and acceptance 'of the said bill or bills of exchange, (which acceptance shall be by the 'underwriting the same under the party's hand so accepting) and after 'the expiration of three days after the said bill or bills shall become 'due, the party to whom the said bill or bills are made payable his 'servant agent or assigns may and shall cause the same bill or bills to 'be protested in manner as in the said Act is enacted: And whereas by 'there being no provision made therein for protesting such bill or bills 'in case the party on whom the same are or shall be drawn refuse to 'accept the same by underwriting the same under his hand, all mer-'chants and others do refuse to underwrite such bill or bills, or make 'any other than a promissory acceptance, by which means the effect and 'good intent of the said Act in that behalf is wholly evaded and no bill 'or bills can be protested before or for want of such acceptance by 'underwriting the same as aforesaid:' For remedy whereof be it enacted by the authority aforesaid, That from and after the first day of *May* which shall be in the year of our Lord one thousand seven hundred and five, in case upon presenting of any such bill or bills of exchange the party or parties on whom the same shall be drawn shall refuse to accept the same by underwriting the same as aforesaid, the party to whom the said bill or bills are made payable his servant agent or assigns may and shall cause the said bill or bills to be protested for non-acceptance as in case of foreign bills of exchange; any thing in the said Act or any other law to the contrary notwithstanding: for which protest there shall be paid two shillings and no more.

9 & 10 W. 3. c. 27.

Party refusing to underwrite Bill of Exchange, such Bill may be protested for Non-acceptance.

V. Provided always, That from and after said first day of *May* no acceptance of any such inland bill of exchange shall be sufficient to charge any person whatsoever, unless the same be underwritten or indorsed in writing thereupon; (2.) and if such bill be not accepted by such underwriting or indorsement in writing no drawer of any such inland bill shall be liable to pay any costs damages or interest thereupon unless such protest be made for non-acceptance thereof; and within fourteen days after such protest the same be sent or otherwise notice thereof be given to the party from whom such bill was received or left in writing at the place of his or her usual abode; and if such bill be accepted and not paid before the expiration of three days after the said bill shall become due and payable, then no drawer of such bill shall be compellable to pay any costs damages or interest thereupon, unless a protest be made and sent or notice thereof be given in manner and form above-mentioned.

No Acceptance of Inland Bills of Exchange to be sufficient, unless the same be underwritten, nor Drawer thereof liable to Costs, &c.

(2.) This provision, although very generally expressed, is held only to affect the right to damages, &c. and not to prevent the liability of a person giving a verbal or collateral acceptance to the payment of the sum specified in the Bill.

No. II. 3 & 4 Anne, c. 9.

Nevertheless every drawer of such bill shall be liable to make payment of costs damages and interest upon such inland bill if any one protest be made of non-acceptance or non-payment thereof and notice thereof be sent given or left as aforesaid.

No Protest necessary for Non-Payment, unless the Bill be drawn for 20*l.* or upwards.

VI. Provided, That no such protest shall be necessary either for non-acceptance or non-payment of any inland bill of exchange, unless the value be acknowledged and expressed in such bill to be received, and unless such bill be drawn for the payment of twenty pounds sterling or upwards; and that the protest hereby required for non-acceptance shall be made by such persons as are appointed by the said recited Act to protest inland bills of exchange for non-payment thereof.

By whom Protest shall be made.

VII. And be it further enacted, That from and after the said first day of *May*, if any person doth accept any such bill of exchange for and in satisfaction of any former debt or sum of money formerly due unto him, the same shall be accounted and esteemed a full and complete payment of such debt, if such person accepting of any such bill for his debt doth not take his due course to obtain payment thereof by endeavouring to get the same accepted and paid and make his protest as aforesaid either for non-acceptance or non-payment thereof. (3.)

Acceptance of Bill esteemed a full Payment of Debt.

Proviso.

VIII. Provided, That nothing herein contained shall extend to discharge any remedy, that any person may have against the drawer acceptor or indorser of such bill.

Act to continue three Years.

IX. And be it further enacted by the authority aforesaid, That this Act shall continue and be in force for the space of three years from the said first day of *May*, and from thence to the end of the next session of Parliament and no longer. [Made perpetual by 7 Anne, c. 25. s. 3.]

(3.) Where defendant being indebted to plaintiffs for goods sold, and C being indebted to defendant, drew a bill on C payable at two months, which C accepted, but afterwards dishonoured: Held, that defendant was not entitled to notice of the dishonour, his name not being in the bill, and that the bill was not to be esteemed a complete payment of the debt under stat. 3 & 4 Anne, c. 9. s. 7. Swinyard v. Bowes, 5 M. & S. 62.

[No. III.] 17 George III. c. 30.—An Act for further restraining the Negociation of Promissory Notes, and Inland Bills of Exchange, under a limited Sum, within that Part of *Great Britain* called *England*. (1)

17 Geo. III. c. 30. 15 Geo. 3. recited.

'WHEREAS by a certain Act of Parliament passed in the fifteenth (2) year of the reign of his present Majesty, intituled *An Act to restrain the Negociation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, within that Part of* Great Britain *called* England, all negotiable promissory or other notes bills of exchange or draughts or undertakings in writing for any sum of money less than the sum of twenty shillings in the whole and issued after the twenty-fourth day of *June* one thousand seven hundred and seventy-five, were made void, and the publishing or uttering and negociating of any such notes bills draughts or undertakings for a less sum than twenty shillings, or on which less than that sum should be due was by the said Act restrained under certain penalties or forfeitures therein mentioned; and all such notes bills of exchange draughts or undertakings in writing as had issued before the said twenty-fourth day of *June* were made payable upon demand and were directed to be recovered in such manner as is therein also mentioned: And whereas the said Act hath been attended with very salutary effects, and in case the provisions therein contained were extended to a further sum (but yet without prejudice to the convenience arising to the public from the negocia-

(1.) This Act has been suspended by various Acts, from 37 Geo. 3. c. 61. to 55 Geo. 3. c. 30. which continued the suspension until the 25th of March, 1816. If there is any further continuance, by any statute of 56 Geo. 3. it will be noticed in the Table of Contents.

(2.) Repealed by 48 Geo. 3. c. 88. post No. 5.

No. III.
17 Geo. III.
c. 30.

'tion of promissory notes and inland bills of exchange for the remittance 'of money in discharge of any balance of account or other debt), the 'good purposes of the said Act would be further advanced;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That all promissory or other notes bills of exchange or draughts, or undertakings in writing being negotiable or transferrable for the payment of twenty shillings or any sum of money above that sum and less than five pounds; or on which twenty shillings or above that sum and less than five pounds shall remain undischarged, and which shall be issued within that part of *Great Britain* called *England* at any time after the first day of *January* one thousand seven hundred and seventy-eight, shall specify the names and places of abode of the persons respectively to whom or to whose order the same shall be made payable; and shall bear date before or at the time of drawing or issuing thereof and not on any day subsequent thereto; and shall be made payable within the space of twenty-one days next after the day of the date thereof; and shall not be transferrable or negotiable after the time thereby limited for payment thereof; and that every indorsement to be made thereon shall be made before the expiration of that time and to bear date at or not before the time of making thereof: and shall specify the name and place of abode of the person or persons to whom or to whose order the money contained in every such note bill draught or undertaking is to be paid; and that the signing of every such note bill draught or undertaking and also of every such indorsement shall be attested by one subscribing witness at the least; and which said notes bills of exchange or draughts or undertakings in writing may be made or drawn in words to the purport or effect as set out in the schedule hereunto annexed, No. I. and II.: and that all promissory or other notes bills of exchange or draughts, or undertakings in writing being negotiable or transferrable for the payment of twenty shillings or any sum of money above that sum and less than five pounds; or in which twenty shillings or above that sum and less than five pounds shall remain undischarged, and which shall be issued within that part of *Great Britain* called *England* at any time after the said first day of *January* one thousand seven hundred and seventy-eight, in any other manner than as aforesaid; and also every indorsement on any such note bill draught or undertaking to be negotiated under this Act other than as aforesaid shall and the same are hereby declared to be absolutely void; any law statute usage or custom to the contrary thereof in anywise notwithstanding.

All negotiable Promissory Notes, &c. for 20*s.* and less than 5*l.* shall specify the Names, &c. of the Persons to whom payable.

Signing of every such Note, and Indorsement, to be attested by one Witness

II. And be it further enacted by the authority aforesaid, That the publishing uttering or negotiating within that part of *Great Britain* called *England*, of any promissory or other note bill of exchange draught or undertaking in writing, being negotiable or transferrable for twenty shillings or above that sum and less than five pounds, or on which twenty shillings or above that sum and less than five pounds shall remain undischarged and issued or made in any other manner than notes bills draughts or undertakings hereby permitted to be published or negotiated as aforesaid; and also the negotiating of any of such last-mentioned notes bills draughts or undertakings after the time appointed for payment thereof or before that time in any other manner than as aforesaid, by any act contrivance or means whatsoever from and after the said first day of *January* one thousand seven hundred and seventy-eight, shall be and the same is hereby declared to be prohibited or restrained under the like penalties or forfeitures, and to be recovered and applied in like manner as by the said Act is directed with respect to the uttering or publishing or negotiating of notes bills of exchange draughts or undertakings in writing, for any sum of money not less than the sum of twenty shillings or on which less than that sum should be due.

Penalty.

III. And be it further enacted by the authority aforesaid, That from and immediately after the passing of this Act all promissory or other

All negotiable Promissory Notes, &c. between 20*s.* and 5*l.* which shall be issued before Jan. 1. 1778. shall be payable on demand.

No. III. 17 Geo. III. c. 30.

notes bills of exchange draughts or undertakings in writing, for the payment of any greater sum of money than twenty shillings and less than the sum of five pounds, or on which twenty shillings and less than the sum of five pounds shall remain undischarged, and being negotiable or transferrable, as shall be issued before the said first day of *January* one thousand seven hundred and seventy-eight, shall be and the same are hereby declared and adjudged payable within that part of *Great Britain* called *England* on demand, any terms restrictions or conditions therein contained to the contrary thereof notwithstanding; and shall be recoverable in such manner or by the like means as is or are directed in or by the said Act with respect to notes bills of exchange or draughts or undertakings in writing therein mentioned to have issued previous to the said twenty-fourth day of *June* one thousand seven hundred and seventy-five; and that all and every other the powers provisoes limitations restrictions penalties clauses matters and things whatsoever in the said former Act contained with respect thereto, and also with respect to all such notes bills of exchange draughts or undertakings in writing, issued after the said twenty-fourth day of *June* one thousand seven hundred and seventy-five, shall be and the same are hereby declared to be in force within that part of *Great Britain* called *England*, as to all notes bills of exchange or draughts or undertakings in writing for twenty shillings or any greater sum and less than the sum of five pounds, or on which twenty shillings or above that sum and less than five pounds shall remain undischarged, issued after the said first day of *January* one thousand seven hundred and seventy-eight, and previous thereto respectively and in like manner as if the same respectively had been the object of the said Act at the time of making thereof, save so far as the same or any of them are altered or varied by this present Act.

Continuance of this, and former Act.

Made perpetual by 27 G. 3. c. 16.

IV. And be it further enacted by the authority aforesaid, That the said former and also this present Act, shall continue in force not only for the residue of the term of five years in the said former Act mentioned, and from thence to the end of the then next session of Parliament, but also for the further term of five years and from thence to the end of the then next session of Parliament.

SCHEDULE.

No. I.

'[*Place*] [*Date*] [*Month*] [*Year*]
'TWENTY-ONE Days after Date, I promise to pay to *A. B.* of
'[*Place*] or his Order, the Sum of for Value
'received by
'Witness, *E. F.* *C. D.*'

And the Indorsement, toties quoties.

'[*Day*] [*Month*] [*Year*]
'Pay the Contents to of *G. H.* of [*Place*] or his Order.
'Witness, *J. K.* *A. B.*'

No. II.

'[*Place*] [*Day*] [*Month*] [*Year*]
'TWENTY-ONE Days after Date, pay to *A. B.* of [*Place*] or
'his Order, the Sum of Value received, as ad-
'vised by
'To *E. F.* of [*Place*] *C. D.*'
'Witness, *G. H.*

And the Indorsement, toties quoties.

'[*Day*] [*Month*] [*Year*]
'Pay the Contents to *J. K.* of [*Place*] or his Order.
'Witness, *L. M.* *A. B.*'

[No. IV.] 39 & 40 George III. c. 42.—An Act for the better Observance of *Good Friday* in certain Cases therein-mentioned.—[16*th May* 1800.]

No. IV. 39 & 40 Geo. III. c. 42.

39 & 40 Geo. III. c. 42.

'WHEREAS the Bank of *England* and bankers in general are often under the necessity of transacting business on *Good Friday*, for the purpose of receiving money for bills of exchange and promissory notes becoming payable on that day, in consequence whereof many persons are prevented observing the same with due solemnity; now, therefore, for the better observance of *Good Friday*,' be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That where bills of exchange and promissory notes become due and payable on *Good Friday*, the same shall from and after the first day of *June* next ensuing be payable on the day before *Good Friday*; and the holder or holders of such bills of exchange or promissory notes may note and protest the same for non-payment on the day preceding *Good Friday* in like manner as if the same had fallen due and become payable on the day preceding *Good Friday*; and such noting and protests shall have the same effect and operation at law as if such bills and promissory notes had fallen due and become payable on the day preceding *Good Friday*, in the same manner as is usual in the cases of bills of exchange and promissory notes coming due on the day before any Lord's Day, commonly called *Sunday*, and before the Feast of the Nativity or Birth-day of our Lord, commonly called *Christmas Day*.

Where Bills of Exchange and Promissory Notes become payable on Good Friday, the same shall be payable on the Day before, and the Holders thereof may protest the same for Non-payment on such preceding day.

[No. V.] 48 George III. c. 88.—An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, in *England*.—[23*d June* 1808.]

48 Geo. III. c. 88.

'WHEREAS various notes bills of exchange and drafts for money for very small sums have for some time past been circulated or negotiated in lieu of cash within that part of *Great Britain* called *England*, to the great prejudice of trade and publick credit, and many of such bills and drafts being payable under certain terms and restrictions which the poorer sort of manufacturers artificers labourers and others cannot comply with, otherwise than by being subject to great extortion and abuse: And whereas an Act passed in the fifteenth year of the reign of his present Majesty, intituled *An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange under a limited Sum, within that Part of* Great Britain *called* England, for preventing the circulating such notes and drafts: And whereas doubts have arisen as to the power of justices of the peace to hear and determine offences under the said Act; and it is therefore expedient that more effectual provisions should be made for enforcing the provisions of the said Act;' be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act the said recited Act shall be and the same is hereby repealed.

15 Geo. III. c. 31. repealed.

II. And be it further enacted, That all promissory or other notes bills of exchange or drafts or undertakings in writing, being negotiable or transferrable for the payment of any sum or sums of money or any orders notes or undertakings in writing, being negotiable or transferrable for the delivery of any goods specifying their value in money, less than the sum of twenty shillings in the whole heretofore made or issued or which shall hereafter be made or issued, shall from and after the first day of *October* one thousand eight hundred and eight be and the same are hereby declared to be absolutely void and of no effect; any law statute usage or custom to the contrary thereof in anywise notwithstanding.

Promissory Notes for less than 20*s.* declared void.

No. V.
48 Geo. III. c. 88.

III. And be it further enacted, That if any person or persons shall after the first day of *July* one thousand eight hundred and eight by any art device or means whatsoever, publish or utter any such notes bills drafts or engagements as aforesaid for a less sum than twenty shillings or on which less than the sum of twenty shillings shall be due, and which shall be in anywise negotiable or transferrable or shall negotiate or transfer the same, every such person shall forfeit and pay for every such offence any sum not exceeding twenty pounds nor less than five pounds, at the discretion of the justice of the peace who shall hear and determine such offence.

Penalty on Persons uttering such Notes, 20*l.* to 5*l.*

IV. And be it further enacted, That it shall be lawful for any justice or justices of the peace acting for the county riding city or place within which any offence against this Act shall be committed, to hear and determine the same in a summary way at any time within twenty days after such offence shall have been committed; and such justice or justices upon any information exhibited or complaint made upon oath in that behalf shall summon the party accused and also the witnesses on either side, and shall examine into the matter of fact, and upon due proof made thereof either by the voluntary confession of the party or by the oath of one or more credible witness or witnesses or otherwise, (which oath such justice or justices is or are hereby authorized to administer,) shall convict the offender and adjudge the penalty for such offence.

Justices may determine on such Offences within 20 Days.

V. And be it further enacted, That if any person shall be summoned as a witness to give evidence before such justice or justices, either on the part of the prosecutor or the person accused, and shall neglect or refuse to appear at the time or place to be for that purpose appointed without a reasonable excuse for such his neglect or refusal to be allowed by such justice or justices, then such person shall forfeit for every such offence the sum of forty shillings, to be levied and paid in such manner and by such means as are directed for recovery of other penalties under this Act.

Penalty on Witnesses not attending, 40*s.*

VI. And be it further enacted, That the justice or justices before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out in the manner and form following; (that is to say,)

Form of Conviction.

'BE it Remembered, That on the Day of in the Year of our Lord *A. B.* having appeared before me [*or*, us] One [or more] of his Majesty's Justices of the Peace [*as the case may be*] for the County, Riding, City, or Place, [*as the case may be*] and due proof having been made upon Oath by One or more credible witness or witnesses, or by Confession of the Party [*as the case may be*] is convicted of [*specifying the offence*].
'Given under my Hand and Seal [*or*, our Hands and Seals] the Day and year aforesaid.'

Returnable to the Quarter Sessions.

Which conviction the said justice or justices shall cause to be returned to the then next general quarter sessions of the peace of the county riding city or place where such conviction was made, to be filed by the clerk of the peace to remain and be kept among the records of such county riding city or place.

Copies of Convictions.

VII. Provided always, and be it further enacted, That it shall be lawful for any clerk of the peace for any county riding city or place, and he is hereby required upon application made to him by any person or persons for that purpose to cause a copy or copies of any conviction or convictions filed by him under the directions of this Act, to be forthwith delivered to such person or persons upon payment of one shilling for every such copy.

Recovery and application of Penalties.

VIII. And be it further enacted, That the pecuniary penalties and forfeitures hereby incurred and made payable upon any conviction against this Act, shall be forthwith paid by the person convicted as follows: One moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed; and in case such person shall refuse or neglect to pay the same, or to give sufficient security to the satisfaction of such justice or justices to prose-

cute any appeal against such conviction, such justice or justices shall by warrant under his or their hand and seal or hands and seals cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner; and which said warrant of distress the said justice or justices shall cause to be made out in the manner and form following; (that is to say,)

Form of the Warrant of Distress.

'To the Constable, Headborough, or Tythingman of
'WHEREAS *A. B.* of in the County of
'is this Day convicted before me [*or*, us] One
'[or more] of his Majesty's Justices of the Peace [*as the case may be*]
'for the County of [*or*, for the Riding
'of the County of *York*, *or* for the Town, Liberty, or District of
'[*as the case may be*] upon the oath of
'or a credible Witness or Witnesses [*or*, by Con-
'fession of the Party, *as the case may be*] for that the said *A. B.* hath
'[*here set forth the offence*] contrary to the Statute in that case made and
'provided, by reason whereof the said *A. B.* hath forfeited the Sum of
'to be distributed as herein is mentioned, which
'he hath refused to pay: These are therefore in his Majesty's name to
'command you to levy the said Sum of by Distress of
'the Goods and Chattels of him the said *A. B.* and if within the space
'of Five Days next after such Distress by you taken, the said Sum, to-
'gether with the reasonable Charges of taking the same, shall not be
'paid, then that you do sell the said Goods and Chattels so by you dis-
'trained, and out of the money arising by such sale, that you do pay
'One-half of the said Sum of to
'of who informed me [*or*, us, *as the case shall be*] of the
'said offence, and the other Half of the said Sum of
'to the Overseer of the Poor of the Parish, Township, or
'Place where the Offence was committed, to be employed for the Bene-
'fit of such Poor, returning the Overplus (if any) upon demand, to the
'said *A. B.* the reasonable Charges of taking, keeping, and selling the
'said Distress being first deducted; and if sufficient Distress cannot be
'found of the Goods and Chattels of the said *A. B.* whereon to levy the
'said Sum of that then you certify the same to me,
'[*or*, us, *as the case shall be*] together with this warrant. Given under
'my Hand and Seal [*or*, our Hands and Seals] the Day of
'in the Year of our Lord

Security for appearance of Party on return of such Warrants.

IX. And be it further enacted, That it shall be lawful for such justice or justices to order such offender to be detained in safe custody until return may conveniently be had and made to such warrant of distress unless the party so convicted shall give sufficient security to the satisfaction of such justice or justices for his appearance before the said justice or justices on such day as shall be appointed by the said justice or justices for the day of the return of the said warrant or distress (such day not exceeding five days from the taking of such security); which security the said justice or justices is and are hereby empowered to take by way of recognizance or otherwise.

Offenders may be committed for Want of Distress.

X. And be it further enacted, That if upon such return no sufficient distress can be had then and in such case the said justice or justices shall and may commit such offender to the common gaol or house of correction of the county riding division or place where the offence shall be committed for the space of three calendar months, unless the money forfeited shall be sooner paid, or unless or until such offender thinking him or herself aggrieved by such conviction shall give notice to the informer that he or she intends to appeal to the justices of the peace at the next general quarter sessions of the peace to be holden for the county riding or place wherein the offence shall be committed, and shall enter into recognizance before some justice or justices with two sufficient sureties conditioned to try such appeal and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions

No. V. 48 Geo. III. c. 88.

(which notice of appeal being not less than eight days before the trial thereof such person so aggrieved is hereby empowered to give;) and the said justices at such sessions upon due proof of such notice being given as aforesaid and of the entering into such recognizance shall hear and finally determine the causes and matters of such appeal in a summary way and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such quarter session shall be final binding and conclusive to all intents and purposes.

Parishioners may be Witnesses.

XI. And be it further enacted, That no person shall be disabled from being a witness in any prosecution for any offence against this Act, by reason of his being an inhabitant of the parish wherein such offence was committed.

Convictions not removable by Certiorari.

XII. Provided always, That no proceedings to be had touching the conviction or convictions of any offender or offenders against this Act shall be quashed for want of form or be removed by writ of *certiorari* or any other writ or process whatsoever into any of his Majesty's courts of record at *Westminster*.

Limitation of Actions.

XIII. And be it further enacted, That if any action or suit shall be commenced against any person or persons for any thing done or acted in pursuance of this Act, then and in every such case such action or suit shall be commenced or prosecuted within three calendar months after the fact committed and not afterwards; and the same and every such action or suit shall be brought within the county where the fact was committed and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon and that the same was done in pursuance and by the authority of this Act; and if the same shall appear to have been so done or if any such action or suit shall be brought after the time limited for bringing the same or be brought or laid in any other place than as aforementioned, then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit or discontinue his her or their action after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs the defendant or defendants shall and may recover treble costs and have the like remedy for the recovery thereof as any defendant or defendants hath or have in any other cases by law.

Venue.

Treble Costs.

[No. VI.] 58 Geo. III. c. 93.—An Act to afford Relief to the *bonâ fide* Holders of negotiable Securities, without Notice that they were given for a Usurious Consideration.—[10*th June* 1818.]

58 Geo. III. c. 93.

WHEREAS by the laws now in force all contracts and assurances whatsoever for payment of money made for a usurious consideration are utterly void: And whereas in the course of mercantile transactions negotiable securities often pass into the hands of persons who have discounted the same without any knowledge of the original considerations for which the same were given; and the avoidance of such securities in the hands of such *bonâ fide* indorsees without notice is attended with great hardship and injustice; For remedy thereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That no bill of exchange or promissory note that shall be drawn or made after the passing of this Act shall, though it may have been given for a usurious consideration or upon a usurious contract, be void in the hands of an indorsee for valuable consideration unless such indorsee had at the time of discounting or paying such consideration for the same actual notice that such bill of exchange or promissory note had been originally given for a usurious consideration or upon a usurious contract.

Bill of Exchange or Promissory Note given for a usurious Consideration not void in the Hands of an Indorsee if he had no Notice thereof.

[No. VII.] 1 & 2 Geo. IV. c. 78.—An Act to regulate Acceptances of Bills of Exchange.—[2*d July* 1821.]

No. VII.
1 & 2 Geo. IV. c. 78.

1 & 2 Geo. IV. c. 78.

WHEREAS according to law as hath been adjudged, where a bill is accepted payable at a banker's, the acceptance thereof is not a general but a qualified acceptance: And whereas a practice hath very generally prevailed among merchants and traders so to accept bills, and the same have, among such persons, been very generally considered as bills generally accepted, and accepted without qualification: And whereas many persons have been and may be much prejudiced and misled by such practice and understanding and persons accepting bills may relieve themselves from all inconvenience by giving such notice as herein-after mentioned of their intention to make only a qualified acceptance thereof; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the first day of *August* now next ensuing if any person shall accept a bill of exchange payable at the house of a banker or other place without further expression in his acceptance, such acceptance shall be deemed and taken to be, to all intents and purposes, a general acceptance of such bill; but if the acceptor shall in his acceptance express that he accepts the bill payable at a banker's house or other place only and not otherwise or elsewhere, such acceptance shall be deemed and taken to be, to all intents and purposes, a qualified acceptance of such bill, and the acceptor shall not be liable to pay the said bill except in default of payment when such payment shall have been first duly demanded at such banker's house or other place.

Bills accepted payable at a Banker's or other Place, deemed a general Acceptance.

Bills accepted payable at a Banker's or other place only, deemed a qualified Acceptance

II. And be it further enacted, That from and after the said first day of *August* no acceptance of any inland bill of exchange shall be sufficient to charge any person, unless such acceptance be in writing on such bill, or if there be more than one part of such bill, on one of the said parts.

Acceptance to be in Writing on the Bill.

PART III.

CLASS V.

*Usury.**

[No. I.] 37 Henry VIII. c. 9.—A Bill against Usury.

37 Hen. VIII. c. 9.
How Offenders in Usury shall be punished.

'WHERE before this time divers and sundry Acts Statutes and Laws have been ordained had and made within this realm, for the avoiding and punishment of usury being a thing unlawful, and of other corrupt bargains shifts and chevisances, which Acts Statutes and Laws been so obscure and dark in sentences words and terms, and upon the same so many doubts ambiguities and questions have arisen and grown, and the same Acts Statutes and Laws been of so little force or effect

On the general Nature and Policy of the Law of Usury.

* In the following note respecting the law of usury, I shall frequently avail myself of Mr. Plowden's Treatise upon the subject, although I very materially differ from him in my opinion of the wisdom and policy of the views upon which that system of laws is founded; conceiving that the general principles so ably and satisfactorily established by Adam Smith, in favour of leaving to contracting parties the care of their own interest, are equally applicable to this subject as to any other—so far at least as regards the question of the general interest of the community, independently of the advantages which may result from the facility of obtaining money for the exigencies of the public, by enabling the Government to obtain the requisite loans, without any impediment from those restraints which are supposed to be a benefit and protection to particular individuals—and that the instances of extortion and oppression which would occasionally result from removing the existing restraints upon the freedom of contract in the loan of money, would be only casual exceptions to the general benefit resulting from the adoption of such a system. Much of the prejudice which has existed against the receiving a compensation for the loan of money or other articles, of which the use is only in the consumption, arises from a mistaken view of the authority of the Scriptures upon the subject, and from drawing general inferences from particular premises and from ordinances applicable to the peculiar situation of the Jewish people—and even in modern times, the existence of any contracts for that purpose has been reprobated in the greater part of Europe, as a violation of those principles of Christian charity and benevolence which inculcate the performance of good offices without any object of personal benefit or remuneration. But the experience of all ages has shewn, that the sacrifice of individual interest, to the purposes of pure disinterested benevolence, is a principle of very partial and limited operation, and that the general intercourse of society can only be maintained by the mutual interchange of services, according to the respective powers and exigencies of the several members of the community; and although the rendering assistance to another, with the view of obtaining a full and adequate remuneration, has no claim to be regarded as a virtue, it certainly by no means follows, that it is therefore to be reprobated as a crime. It is clear, that the true question as to prohibiting or regulating the compensation to be given for the temporary use of money, considered in its general effects, is not between the obtaining the benefit of such assistance gratuitously, or upon more favourable terms, and the obtaining it for a particular equivalent; but between the obtaining it upon such equivalent as the lender may deem more advantageous than a different application of his property, and the suffering the loss and inconvenience which may arise from its being totally withheld—and there are very few writers who would now contend for

No. I.
37 H. VIII. c. 9.

'that by reason thereof little or no punishment hath ensued to the of-
'fenders of the same, but rather hath encouraged them to use the
'same:' For reformation whereof, be it enacted by the King our Sove-
reign Lord, by the assent of the Lords Spiritual and Temporal and of
the Commons in this present Parliament assembled, and by the autho-
rity of the same, That all and every the said Acts Statutes and laws
heretofore made of for or concerning usury shifts corrupt bargains and
chevisances and every of them, and all pains forfeitures and penalties

All Statutes concerning Usury repealed.

the absolute prohibition of such a contract, however much they may approve of its being subjected to particular restraints and regulations *.

The very acute and masterly disquisitions of Mr. Bentham, (not the less profound and instructive for the lively and amusing manner in which they are conducted,) have greatly contributed to remove the impressions which were previously very general upon the subject—and, so far as my intercourse with society will enable me to form a judgment, an accordance with his sentiments in favour of an unrestricted commerce with regard to the interest of money, has become very prevalent, although certainly very far from universal.

A very opposite sentiment is manifested by Lord Redesdale, in several of his judgments, as Lord Chancellor of Ireland. In the case of Molloy *v.* Irwin, 1 Sch. & L. 312, he expresses himself as follows:—"I consider that transactions of this nature are set aside by courts of equity, not with a view to the individual, but on public grounds, in order to render the lending of money generally beneficial, by facilitating the means of procuring it on reasonable terms. This is the view in which the laws against usury are to be taken, and the principle on which they are to be supported, (particularly in a commercial country,) against the theories of persons who have written on the subject; otherwise there is no reason why a man should not make the most of his money, as well as of any other species of property." And in a preceding case, Drew *v.* Power, 1 Sch. & L. 182, his Lordship intimates the same views upon the subject, at greater length, observing, that the true reason on which the legislature has said, that in bargains for money no more than a certain fixed sum shall be taken, by way of interest for the loan, is founded on great principles of public policy. First of all, it is more advantageous to the public, that persons who are in possession of money should use their own industry in the employment of their money, than that they should sit idle and take the benefit of it through the industry of others, and therefore the loan of money at any large rate of interest has always been discouraged—and as a State becomes rich the interest of money is always diminished, with a view that a man who sits idle shall receive as low a rate of interest as can induce him to lend to another. But if a consideration of any description beyond that rate of interest can be had, the profit derived from that is just as injurious to the public as if it were taken in the shape of a reservation of higher interest; and therefore the policy of the law would be completely defeated, if Courts were not to be jealous of such transactions as these, and were not to watch them with severity, and be sure that they did not permit persons, under cover of ordinary dealings between man and man, to obtain an advantage beyond the legal interest. If every man could obtain, for the loan of his money, as high a rate of interest, without hazard, as they do who employ it in trade or manufactures, which are hazardous undertakings, no man would employ his money in such hazardous undertakings—the most industrious of the people would be ground down by the usurers; they would get the profits of the trade, and the enterprizing and industrious trader would be ruined: one sees every day, when traders who have been in the habit of borrowing become bankrupts, how large a share of their property is swallowed up by usurers."

It is manifest how completely all these observations take it for granted, that there is a certain quantity of money which must necessarily be lent out at interest,

* Mr. Barrington, after quoting the observation of Tacitus, that amongst the Germans fœnus agitare ignotum, ideoque magis servatur, quam si vetitum esset, admits that the true reason, probably, for its not prevailing amongst them, or our ancestors, was that they had little or no personal property, and those who have landed estates have always been envious of the sudden fortunes raised by commerce, and the improvement and increase of personal estates. Treatise on Treatise may be written to prove, that these interests mutually support and strengthen each other; the prejudice indeed may be somewhat lessened, but cannot be eradicated. He adds, that Sir Edward Fines, afterwards Baron Clinton, opposed a bill drawn by Judge Brooke, and moved in the House of Lords, by saying, "Shew me a State without usury, and I will shew you a State without trade."—Obs. on Statute of Merton, ch. 5.

No. I. 37 H. VIII. c. 9.

concerning the same and every part thereof, shall from henceforth be utterly void and of none effect to all intents constructions and purposes.

Selling of Wares and buying them again.

II. And be it further enacted by the authority aforesaid, That no person or persons of what estate degree or condition soever he or they be, from and after the last day of *January* next coming shall by himself factor attorney servant or deputy, sell his merchandises or wares to any person or persons and within three months next after by himself factor attorney deputy or by any other person or persons to his use and behoof,

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and which borrowers would certainly obtain at a lower interest, if the lenders were restricted from advancing it at a higher—how completely they take it for granted, that persons exercising their own judgment would be ground down and oppressed by contracts which they voluntarily enter into with their eyes open, for the accommodation of money, to which they have no more claim than to any other property of the person advancing it. It is very true, that as countries advance in opulence, the rate of interest usually diminishes,† but this is not so much the effect of law as of the nature and order of things, by which the surplus money becoming greater in proportion to the demand for its temporary use, the competition among lenders reduces the rate of accommodation to borrowers; and it is in this as in almost all the other cases evident, that the check upon the motives of supply is rather an impediment to than a mean of facilitating the acquisition. By the Statute 28th Henry VIII. c. 14. no French wines are to be sold for more than eightpence a gallon; but nobody can suppose that the quantity of Burgundy or claret would be increased by carrying this Statute into execution:—as little will the loan of money, for the purposes of commerce, be promoted by restricting the interest of it to five per cent. when, upon a free competition of contract between borrower and lender, it would purchase a much larger sum—and if in the nature of things it might be had for four, there would be no great practical effect in restricting it to five. The mention

† This is not by any means universally the case, as modern experience abundantly testifies. The commerce and opulence of the country have been incalculably greater since money could not be generally obtained at five per cent. and upon indisputable security than they were when loans at four per cent. were more general, and the receiving five per cent. was considered as an advantage. The difference arises from the great value attached to the command of ready money as an instrument of commerce, increasing in proportion to the extent and magnitude of the commercial engagements to which that instrument can be applied; in the same manner as the rent of a house, in a busy town, will exceed the rent of one, similar in other respects, in a remote and unfrequented situation.

Another important circumstance in the examination of this subject, is the magnitude of the National Debt; in itself no doubt a considerable evil, but which furnishes strong evidence of the resources of the country, in which so large a capital could be withdrawn from the ordinary source of employment, in order to be invested upon permanent annuities, or more generally speaking, to be placed out at interest. The great advantage of this mode of investment, with respect to confidence in its security, punctuality in obtaining the stipulated payments, and facility of transfer, would extend to give it a decided advantage over every other mode of investment, not connected with active employment. But the extent of the property of this description is so great as necessarily to reduce the proportionate number of competitors for its acquisition, and consequently to diminish the price paid for its acquisition; in other words, to produce a higher interest than would be otherwise obtained, in case the amount of funded property bore a similar proportion to the surplus funds, which are applicable to the acquisition of it; while the grounds of preference already adverted to, sufficiently account for the smaller proportion of surplus capital invested in private securities, the competition for the benefit of such capital as is so employed, and consequently for the advanced rate of interest, without furnishing any reasonable ground for the inference of a declining state of national prosperity, in respect of the useful application of capital employed in the pursuits of industrious enterprize; or for an unfavourable comparison, in these respects, contrary to the clear indisputable testimony of historical fact, with those periods when a much smaller rate of interest was generally received. Considering, therefore, how extensively the subject may be influenced by extrinsic circumstances, it does not appear that there is such a connection between a low and depressed state of interest, and a general state of national prosperity, as to render the legal restriction of the rate which would naturally follow the existing exigencies of society, and the consequent direction of capital employed into other channels more advantageous to its possessor, a beneficial and politic exercise of legislative authority.

No. I.
37 H. VIII. c. 9.

buy the same merchandises or wares or any part or parcel thereof, upon a lower price, knowing them to be the same wares or merchandises that he before did so bargain and sell upon the pains and forfeitures hereafter limited in this estatute.

III. And be it also enacted by the same authority, That no person or persons of what estate degree quality or condition soever he or they be, at any time after the said last day of *January* next coming, by way or mean of any corrupt bargain loan eschange chevisance shift interest of

No Person shall take above 5*l.* for the Forbearance of 100*l.* for one Year. Altered 21 Jac. 1. c. 17.

of the theories of persons who have written upon the subject is evidently intended to allude to the work of Mr. Bentham—and it certainly is very fashionable among those who think that political economy cannot be too extensively made a subject of positive regulation, to apply the appellation of speculators or theorists to others who argue in favour of the utility of leaving traffic of any given description to its natural course, and think that the interests of individuals may be safely confided to their own judgment and discretion. When it is admitted that, but for the sake of giving a greater facility to the advance of money upon reasonable terms, there is no reason why a man shall not make the most of his money as well as of any other species of property, it seems to be overlooked that men have various ways of disposing of their money besides the lending it upon interest—and if that particular mode is rendered less advantageous than it would naturally be, while many other modes are left without restraint, a very small portion of discernment is sufficient to enable the party to exercise that choice in such an application of his property which will be most productive of his own advantage. And when it is remarked how large a share of the property of bankrupts is swallowed up by usurers, it is clear that the observation cannot be intended to apply to the case of usury, in a legal sense—for creditors, whose debts are really usurious, cannot have any part of the property at all—and the fact, that leaders of money receive the greatest proportion of the property, only proves, that they are the persons who sustain the greatest proportion of the loss.

But I admit, that any observations upon this subject, however correct, as applicable to the general question of political economy, are not likely to reach beyond speculation—or to be attended with any practical effect in the alteration of the law. The conviction, that the State alone can receive pecuniary assistance, unfettered by legal protection, and that thereby all competition is excluded from those whose mistaken views of their own advantage would induce them to go beyond the pale of protection which encompasses them, will in all probability be a lasting impediment to any material change of system; and while the law continues to subsist, and while, in the language of Lord Mansfield, it is considered as affording to persons a protection against themselves, there can be but one opinion upon the propriety of carrying it fairly into execution, according to its real object and intention.‡

Of the History and Progress of the Laws.

§. 2. It seems to be agreed, that at common law usury was only lawful when practised by the Jews, and that when committed by Christians, it was an offence

‡ See some important observations by Mr. Sugden, in a pamphlet published in 1812, on the Annuity Act, and on raising the legal rate of interest, which are incorporated in the last edition of his Treatise on Vendors and Purchasers. His examination of the comparison of the actual rate of interest usually taken when the restriction was imposed, with the legal rate which was considerably higher, and the distinctions which he makes from that circumstance is very material. Since the above note was completed, the Proposal for the Abolition of the Laws of Usury was introduced in Parliament, and met with a reception by which I was agreeably disappointed. The measure was unsuccessful, and was given up by the proposer; but the ground of opposition was the inconvenience which would arise from the sudden relinquishment of the existing system of law, an inconvenience which I am perfectly ready to admit, and should therefore prefer seeing the measure carried with adequate provisions for the obviating such inconvenience, which would but be done by fixing a distant period, not less than two years, for the commencement of the actual operation of the measure, if adopted. But a great progress was evidently made, when it appeared that of all the opponents to the measure, one only could be found who ventured to express an approbation of the existing law, as depending upon its proper merits. The member referred to has published a pamphlet in favour of the reduction of the present rate of interest, and is reported, in delivering his sentiments in Parliament, to have undertaken to confute the positions of Mr. Bentham, point by point. It did not however seem, that there was any desire to call for the performance of this undertaking.

No. I.
37 H. VIII. c. 9.

any wares merchandises or other thing or things whatsoever, or by any other corrupt or deceitful way or mean or by any covin engin or deceitful way or conveyance shall have receive accept or take in lucre or gains for the forbearing or giving day of payment of one whole year of and for his or their money or other things that shall be due for the same wares merchandises or other thing or things above the sum of ten pound in the hundred, and so after that rate and not above of and for a more or less sum or for a longer or shorter time, and no more or greater gain

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cognizable in the Spiritual court. The extent of the common law upon this subject, and its continuance since the passing of the existing statutes, are subjects upon which a difference of opinion is entertained, and which, for any practical purpose, it does not seem material to consider. Mr. Plowden's Treatise contains a clear and able discussion upon these questions, followed up by an interesting historical view of the state and conditions of the Jews in England, wherein he cites from Roger Hoveden a very curious ordinance of Richard I. for the regulating and registering the loans by them.

By the Statute of Merton, 30 Hen. VIII. c 5, it was provided, that usury should not run against any being within age, from the time of the death of his ancestor until his lawful age, which statute it is agreed could only affect Jews. In the reign of Edward I. but in what year is uncertain, the Statute De Judaismo was passed, by which all usury was absolutely prohibited.

In the 3d of Henry VII. an Act passed against chevisance and usury, (c. 5.) prohibiting any bargain by way of dry exchange, the object of which was the suppression of bargains grounded in usury, coloured by name of new chevisance. This wa followed by two other Acts of the same reign; viz. An Act against Exchange and Re-exchange, Chevisance, Usury, and Brokers—3 Henry VII. c. 6—and an Act for repealing the Act last mentioned, and making more effectual provisions against usury. By these Acts the term *Usury* is applied to all loans upon interest, and which were prohibited under certain penalties.

The Statute 37 Henry VIII. c. 9. (No. 1 of this Class,) repeals all preceding Acts, Statutes, and laws respecting usury, and is the foundation of the subsisting law upon the subject.

This Act renders void all bargains for taking more for giving day of payment than ten per cent. per annum.

The Act against usury, 5 & 6 Edward VI. c. 20. referring to the preceding Act of Henry VIII. states in the preamble, "The which Act was not meant or intended for the maintenance and allowance of usury, as divers persons, blinded with inordinate love of themselves, have and do mistake the same, but rather was made and witnessed against all sorts and kinds of usury, as a thing unlawful, as by the title and preamble of the said Act it doth plainly appear, and yet nevertheless the same was by the said Act permitted for the avoiding of more evil and inconvenience that before that time was used and exercised:—*But forasmuch as usurie is by the word of God utterly prohibited as a vice most odious and detestable, as in divers places of the Holy Scripture it is evident to be seen, which thing by no godly teachings and persuasions can sink into the hearts of divers greedie, uncharitable, and covetous persons of this realm, nor by any terrible threatenings of God's wrath and vengeance that justly hangeth over this realm, for the great and open usurie therein dayly used and practised, they will forsake such filthy gain and lucre, unless some temporal punishment be provided and ordained in that behalf.*" The Act, therefore, proceeding upon this accurate and judicious view of the subject, prohibits, under pain of imprisonment, fine, and ransom, the taking of any interest whatever. In the 13th of Elizabeth, (see No. 2 of this Class,) it was found, *that this Act had not done so much good as it was hoped it should*, and therefore the Act was repealed, and the prohibition of 37 Henry VIII. against taking more than ten per cent. was revived; the vice of usury still continuing the principal object in contemplation. The preamble of 21 Jac. I. c. 17. [No. 3.] proceeds upon more moderate views of the subject, stating reasons for deeming ten per cent. too high a rate of interest, and therefore reduces it to eight, and concludes its enactments, as Paley observes, with the sage provision, "that no word in this law contained shall be construed or expounded to allow the practice of usury, in point of religion or conscience;" and the subsequent Acts of 12 Charles II. c. 13. and 12 Anne, c. 16. reducing the rate of interest successively to six and from that to five per cent. where it has been left, leave all spiritual views upon the subject out of the question, stating reasons of public policy, which, whether wise or otherwise, must be considered as evincing the spirit and principles, according to which the construction of the subsisting law is to be chiefly regulated.

No. I.

37 H. VIII. c. 9.

or sum thereupon to be had, upon the pains and forfeitures hereafter in this Act mentioned and contained,

IV. And be it further enacted by the authority aforesaid, That if any person or persons at any time after the said last day of *January* do bargain and sell or lay to mortgage by any way or mean any manors lands tenements or hereditaments to any person or persons upon condition of payment or non-payment of any sum or sums of money to be had paid or made at any day certain or before any such day by him that shall so

There shall not be taken above 10*l.* in the 100*l.* upon Sale or Mortgage of Lands.

On the Construction of the Law of Usury.

Part I. Of the Nature of the Contract.

§ 3. The operation of the statutes of usury is either by avoiding the contract, or by subjecting the party taking usurious interest to the penalty of treble the principal sum lent, and upon this division of the subject are founded the two established principles;—1. That no penalty is incurred by entering into an usurious contract, without actually taking usurious interest. 2. That a contract, not usurious, is not rendered invalid by the Act of taking usurious interest.

(a) As to the Necessity of there being a Loan.

The first point to be regarded is the kind of contract upon which the legal prohibition attaches; and the general language of the cases upon the subject is, that in order to constitute usury there must be a loan; but certainly there are many instances in which the doctrine of usury has been applied to contracts that cannot, with much propriety, be considered as contracts of loan; the nature of which, so far as relates to the present subject, consists in the supplying the borrower with a certain amount of money or other consumable property, for which a similar amount is afterwards to be returned with or without an additional compensation for the intermediate use. This contract in the Roman law is known by the name of *Mutuum*, as distinguished from the loan of commodities to be specifically returned; and which, under different circumstances, is known by the names of *Commodatum* or *Precarium*. The latter species of loan is by the French law denominated *Prêt d'Usage*, the former *Prêt de Consumption*.

In Spurrier *v.* Mayoss, 1 Ves jun. 531, it was said, by Lord Commissioner Eyre, "Usury is taking more than the law allows upon a loan, or as I read it, for forbearance of a debt." Even this view of the subject seems to be more confined than some of the undisputed authorities respecting it would seem to require.

In a case where Goulton was indebted to Flintoff, and Flintoff to Wilson, it was ruled, that Wilson was guilty of usury by accepting a premium for accepting Goulton as debtor instead of Flintoff, and taking his note for a year, and that the transaction was in substance a loan to Goulton—Wade *v.* Wilson, 1 East. 195. Where a surety for a debt gave a sum of money for forbearance of the debt, the transaction was ruled to be equivalent to a loan—Manners *v.* Postan, 3 B. & P. 343.

(b) That no Colour can give effect to Usury.

It is agreed on all hands, that if the real object and intention of the parties is the loan of money, the legal consequences of usury will attach, whatever form or colour may be apparently given to the transaction; the intention is a question of fact to be determined by a jury, upon a general view of the circumstances of the case. The Statute 37 Hen. VIII. refers to any corrupt bargain, loan, exchange, chevisance, shifts, interest of any wares or merchandises, or other thing whatsoever. The Statutes of Chas. II. and Anne refer more comprehensively to any covin engine or deceitful conveyance. See upon this subject, Floyer *v.* Edwards, Cowp. 112—Murray *v.* Harding, 2 Bl. Rep. 862. 3 Wils. 395—Low *v.* Waller, Doug. 736—Barber *v.* Vansommer, 1 Bro. C. C. 149—Davison *v.* Pitt, 1 Esp. N. P. 1; and as to requiring a borrower, &c. to take goods instead of money, see Pratt *v.* Willey, 1 Esp. 40—Davis *v.* Hardacre, 2 Campb. 375—Coombe *v.* Mills, 2 Campb. 553.

(c) Of Discounting Bills.

There are many cases in which it is taken for granted that the deducting upon the discount of a bill of exchange a larger sum than the amount of legal interest for the time the bill has to run is usurious; but I conceive that these cases are only considered applicable where the party, from whom the discount is taken, is to bear the risk of the solvency of the other parties, and not where the bill is purchased for a smaller sum than the amount (deducting intermediate interest) at the risk of the purchaser; and that the same doctrine may be applied to the *bona fide* purchase of other debts. In Massa *v.* Dauling, 2 Str. 1243, Lee, Ch. J. left it to the jury to find whether the transaction was to be deemed a purchase or a loan.

In Lee *v.* Cass, 1 Taunt. 511, a person applied to by the drawer to discount a bill refused to do so, but on the condition that he should be permitted to guarantee the payment by the acceptors at a certain rate; there was no doubt of the solvency of the acceptors, and the only reason for the guarantee was the refusal to discount the bill on any other terms. The jury considering this to be a shift to obtain a higher rate of interest than 5*l.* per cent. found a verdict for the plaintiff; and upon motion for a new trial, on the ground that there was no forbearance to the drawer,

No. I. 37 H. VIII. c. 9.

bargain sell or lay to mortgage the same manors lands tenements or hereditaments, that the same person or persons to whom any such manors lands tenements or hereditaments shall be so bargained sold or laid to mortgage, shall not by reason thereof have ne take in lucre or gains of the issues revennes and profits of the same manors lands tene-

in as much as the contract of guarantee protected him from payment at all events, the Court of C. B. held, that the objection was not well founded, for clearly there was a forbearance till the bill became due, and the guarantee would not protect the drawer from the payment of the bill in the hands of any other holder, but would immediately give him a right to recover against the defendant; and that if the objection were valid, it would give a complete facility and security to usury. I should conceive that the grounds of this case might be more effectually supported according to the principle of legal reasoning by resting it on the finding of the jury as to the real nature of the transaction than upon general doctrine, that a *bona fide* contract might not be made for the purchase of an accepted bill from the drawer, with a consideration for guaranteeing the payment by the acceptor.

A discount of a bill by a country banker to J. S. deducting interest for the whole time, although part of the payment at the request of J. S. was made in bills payable at a future date, was held not usurious, as the surplus might be referrable to expence of remittance, it being found by the jury to be a fair transaction in the usual course of business. See Hammett *v.* Yea, 1 B. & P. 144. in which the general nature of the subject is very ably discussed; but deducting the whole interest upon one bill, with an agreement that another bill which had time to run should be taken as cash, was held usurious—Parr *v.* Eliason, 1 East 92. Deducting interest for the whole time, and giving bills at three days' sight, without inquiring in what shape the purchaser choose to receive the balance, was held usurious—per Lord Kenyon, at N. P. Matthews *v.* Griffiths, Peake 200; a deduction of 7*s.* 6*d.* per cent. for commission by a discounter put to no expence or considerable trouble, was held usurious—per Lord Ellenborough, 1 Camp. 445; a commission of 5*s.* per cent. taken by a country banker upon discounting bills was holden not usurious—Winch *v.* Fenn, 2 T. R. 52; so Baynes *v.* Fry, where a reasonable compensation was taken for the trouble of sending bills about for acceptance and payment; and see Auriol *v.* Thomas, 2 T. R. 52—*Ex parte* Jones, 17 Ves. 332. 15 Ves. 120—*Ex parte* Henson, 1 Mad. 112.

In Barclay *v.* Walmsley, 4 E. 55, it was ruled, that an acceptor of a Bill of Exchange was not guilty of usury for taking a consideration of more than the amount of legal interest for paying it before it was due. It was argued, that it would be very easy to evade the Statutes of Usury by framing securities in this form; but Lord Ellenborough said, "That to constitute usury there must either be a direct loan and a taking of more than legal interest for the forbearance of re-payment, or there must be some device contrived for the purpose of concealing or evading the appearance of a loan and forbearance when in truth it was such; but here was no loan or forbearance, only a mere anticipation of the payment of a debt by the party before the time, when by law he would be called upon for it—that the defendant had been guilty of a very improper practice, but not of usury."—It is difficult to discover wherein the alleged impropriety consisted, there being no suggestion of any undue influence, or any other objection to the transaction, than that which was founded in the general nature of the transaction itself. Usury being now admitted to be a matter of positive law, and the real value of the use of money being a matter of as much fluctuation as the price of Stocks, or any other commodity, the only inquiry would seem to be, whether the case is or is not within the prohibition of the law; that the party who gave the consideration had an adequate motive of interest or convenience in doing so may without much difficulty be taken for granted; and it is easy to conceive, that a less compensation than that which was taken would not have been so beneficial an employment of the money of the party advancing it as other applications which his own occasions might require. In *ex parte* Henson, 1 Mad. 116. an objection being taken to the proof of a debt, in consequence of 10*s.* per cent. being agreed to be paid as commission on a bill, the V. C. said, "The bill was delivered in part payment of an antecedent debt, not in consequence of any contract for the loan of money. There was no loan of money, nor any thing done colourably and as a veil of usury."

(d) Of Discount on the Redemption of an Annuity.

In Marsh *v.* Martindale, 3 B. & P. 154. an annuity of 500*l.* had been granted in consideration of 3500*l.* redeemable upon payment of the original consideration, with all arrears, costs, and expences, upon giving six months' notice or allowing half a year's annuity. An agreement was entered into for the cessation of the annuity, upon receiving a Bill of Exchange for 5000*l.* payable at the end of three years, which 5000*l.* was made up by the original purchase-money and arrears of the annuity

ments or hereditaments above the sum of ten pound in the hundred for one whole year, and so after the rate abovesaid for a more or lesser sum or for a longer or shorter time, and no more nor otherwise upon the pains forfeitures and penalties hereafter in this present estatute limited and expressed.

No. I.
37 H. VIII. c. 9.

—an allowance for redeeming without notice—a sum paid in cash, and the interest for 5000*l.* for three years. This deduction of the three years' interest in the first place, and at the time of the advance being held upon grounds unconnected with the present part of the discussion to exceed the legal rate of interest, the transaction was deemed by the Court of Common Pleas to be usurious. The opinion of the Court, upon this point of the case, is expressed by Lord Alvanley as follows:—"It was contended that the transaction was, to all intents and purposes, the purchase of an annuity, and it has been determined in all cases, that the purchase of an annuity, however exorbitant the terms may be, can never amount to usury. But if the transaction respecting the annuity be only a cover for the advancement of money by way of loan, it will not exempt the lender from the penalty of the Statute, or prevent the securities from being void: then is this transaction the purchase of an annuity or not? I admit, that if the annuity had been irredeemable, the plaintiff would have had a right to say, that he would not sell it under 5000*l.* But here the party was entitled to redeem on payment of 4083*l.* It was then proposed that a sum should be advanced, making with the purchase-money 4250*l.* and that a bill of 5000*l.* should be discounted at three years. What is this but forbearing for three years to take the sum of 4250*l.* for which forbearance he was to receive interest on 5000*l.*?" Upon very frequent consideration of this case, and with every endeavour to divest my mind of any general impression which I may entertain, I cannot but think the decision extremely objectionable and wholly repugnant to the principles which have usually prevailed in the discussion of the subject. With respect to the supposed right to redeem; it was a right depending upon the condition of an actual advance of the stipulated amount, and for which the party was under no obligation to accept a substitution, and the case not being within the condition and terms of the stipulation, was as much a matter of open contract as if no such stipulation had existed, and supposing the stipulation out of the case, a sum of 5000*l.* payable immediately, might have been legally received as a consideration for the cessation of the annuity, and consequently *à fortiori*, an equal sum payable at a future period—but the more important consideration of the question arises from the kind of object which is in the contemplation of the contracting parties. The whole system of usury, commencing with theological prejudices and continued upon considerations of political expediency, was to prevent the taking an undue advantage of persons who might be willing to give an excessive compensation for the present pleasure or convenience of having a sum of ready money at immediate command—and almost all the cases which have arisen respecting the evasion of the Statute have turned upon the temptation of an immediate pecuniary accommodation received, or at least upon the exemption from and forbearance of paying a sum of money which might have been immediately demanded; but in the case in question no such pecuniary accommodation was in the contemplation of the parties. Leaving out of consideration the small sum advanced for the purpose of making up the amount, no money, nor any thing regarded as immediately convertible into money, was advanced —no money which could have been immediately demanded was forborne; the whole object was the cessation of a valid but inconvenient obligation, for the cessation of which (subject to the express stipulation of redemption upon different terms) the parties were as much at liberty to contract, according to their respective views of their own convenience, as upon the purchase of an estate or any other conceivable subject.

(e) Of Discounts, &c. on the Sale of Goods.

A contract upon the sale of goods to receive a higher price exceeding the legal rate of interest, if the price were not paid in a given time, was ruled to be not usurious, it appearing to be the usage of the particular trade—Floyer *v.* Edwards, Cowp. 112; but this profit was, in a subsequent action for money had and received, disallowed as unreasonable, and one which could not be recovered in that species of action, although not usurious—Plumbe *v.* Carter, Cowp. 116. This decision was in a great measure founded upon the particular views of Lord Mansfield, with respect to the action for money had and received, as enabling the Court to take a more comprehensive view of the fairness and propriety of the transaction, than in other proceedings resting upon a question of mere legality. In a subsequent case, when it was agreed between a bleacher and his customer, that the former should send in his accounts every three months, and that in case of immediate payment a discount should be taken off of 30 per Cent. the commissioners of bankrupt refused to allow

No. I. 11 VIII. c 9.

The Forfeiture of the Offenders in the Premises.

V. And be it further enacted by the authority aforesaid, That if any person or persons of what estate degree quality or condition soever he or they be, at any time after the said last day of *January* next coming shall do any act or acts thing or things contrary to the tenor form and effect of this estatute, or of any clause article or sentence contained in the same, that then all and every offender and offenders therein, or in any part thereof, shall forfeit and lose for every such offence the treble value of the wares merchandises and other thing or things so bargained sold exchanged or shifted, and the treble value of the issues and profits

a proof for more than the sum to which the debt would be reduced to by the stipulated discount, with an addition of five per cent.—and Lord Loughborough dismissed a petition for an allowance to prove the remainder of the demand, although it appeared to be according to the custom of the trade, observing, that the trade of a gold refiner, upon which Floyer and Edwards arose, had been turned into a cover for usury---and that the custom of the trade could not make the debt more than the money really advanced with five per cent. The creditor could not have more than five per cent.- -*Ex parte* Aynsworth, 4 Vesey, 678. This short judgment does not take a very distinct view of the case; it speaks of money advanced, and not taking more than five per cent. upon the money so advanced, and at the same time the transaction is not treated as usurious, for the party was allowed to recover what was considered as the actual debt, with five per cent thereon; and the real question, which was of no small importance, was not fairly met, viz. how far a party upon sale of goods, or other contract unconnected with the loan of money, may agree to make an abatement, upon payment within a stipulated time; and how far the sum, to which the price would be reduced by such abatement, should be regarded as the real price. There is no ground whatever for allowing the interest, so far as the amount of 5*l.* per cent. unless as connected with the period of a year, which was no ingredient in the case, and very few tradesmen would not prefer making a reduction of a greater amount, in case of immediate payment, to allowing the demand to remain open upon general credit When the discount is of so large an amount as in the case referred to, and so far beyond any advantage which could be anticipated by the mere difference of the time of payment, it seems reasonable to conclude, that the transaction is only a contrivance to secure a larger dividend in case of bankruptcy, and not as a substantial contract intended to be acted upon between solvent parties; but this view of the subject is wholly connected with the question of usury.

(f) Of Transactions respecting the Sale of Lands.

The following cases have occurred upon questions of usury, as connected with the sale of real estates. In Dewar *v.* Span, 3 T. R. 425. upon the sale of an estate in the West Indies, it was agreed, as part of the contract, that part of the purchase-money should remain at interest, at six per cent. which was ruled to be usurious. The discussion principally turned on the effect of St. 14 Geo. III c 79. respecting West India securities, (see No. 6 of this title.) It was urged, that as the payment of such interest was part of the contract, the bond given for securing it was legal, and that the transaction could not be called usury within the true meaning of the Statutes, for they all relate to loans of money, and here was no loan at all; that, in Yeoman *v.* Barton, 1 Lutw. 271, it was declared, that the plaintiff sold the defendant several pieces of hammered money, to the amount of 300*l.* which the defendant promised to pay, with 4*l.* 10*s.* interest, at the end of eight months, and the Court held there was no loan, without which there could be no usury. The opinion of the Court was pronounced by Lord Kenyon, merely upon the effect of the Statute of Geo III. accompanied by the general observation, "that if the present attempt were to succeed, it would sap the foundation of the Statutes of Usury." This point has always appeared to me to be entitled to a rather more serious notice, and the case to have been decided with too much of that hurry which has too often blended itself with the administration of justice, and even been the theme of panegyric by confounding it with proper dispatch It is very evident, that a modification of the terms of a contract of sale has as little affinity as possible with the transactions, which the Statutes of Usury were intended to restrain and correct; but this hasty and sudden determination, pronounced on the impulse of the moment, is considered by Mr. Plowden as establishing a doctrine most evidently at variance with the general principles of the subject, and the previous course of judicial determinations A much more accurate view of the Law of Usury appears to have been taken by Lord Commissioner Eyre, in Spurrier *v.* Mayoss, 4 Bro. Ch. 28. On sale of an estate the defendants paid part of the purchase-money, and agreed to pay the remainder at a certain day, with 5*l.* per cent. interest, or otherwise to pay a rent, (considerably exceeding the amount of legal interest,) deducting 5*l.* per cent.

of the said manors lands tenements and hereditaments so had taken or received by reason of any such bargain sale or mortgage, and also shall have and suffer imprisonment of his body, and make fine and ransom at the King's will and pleasure; the moiety of which forfeiture of the said treble value shall be to the King, and the other moiety to him or them that will sue for the same in any of the King's courts by action of debt

No. I. 37 H. VIII. c. 9.

on the amount which should be paid. The opinion of the Lord Commissioner was as follows:—"The language of the agreement gave it, to my mind, the appearance of Usury; but when one defines Usury, and looks at the spirit of the agreement, the first impression does not seem sufficiently strong to sustain the defence. Usury is the taking of more than 5*l.* per cent. for the forbearance of a debt. The first question therefore is, Was there a debt? I think not. The whole rested upon an executory agreement, which, for performance, depended on many circumstances which might prevent its ever becoming a debt. This however is a narrow ground—take it on the more general ground, as disclosed by the proceedings, the contract was for a title, and almost for ready money. Possession, till the completion of the title, was a fair subject of contract between the parties. In the event of the money not being paid, a new idea appears to have occurred to the parties, as to the possession. The bargain for title was to be suspended, and a new relation to arise between the parties, namely, that of landlord and tenants. If so, there is nothing usurious. If they turned themselves into those characters, the plaintiff might well be considered as entitled to rent till he put the estate out of him. The language of the agreement ought not to control what I conceive to have been the substance of it; and as it is an executory agreement, the Court has more room to give it a liberal construction."

Nothing can be more manifest than the justice of the principle stated in this opinion, that the language of the agreement ought not to control what is supposed to be the substance of it. See also as to contracts for interest upon interest, upon the sale of a partnership interest, Tarleton *v.* Backhouse, Coop. Ch. R. 231.

It is ruled not to be usurious to advance a sum of money arising upon the sale of stock, in consideration of receiving the same amount of stock at a future day, or of replacing the stock at a given day, and in default thereof paying the money advanced at a subsequent day, with the amount of the dividend that would have been produced by the stock in the mean time—Tate *v.* Willings, 3 T. R. 531; or in consideration of forbearing to sue for a debt, to agree at a given day to purchase such stock as might have been purchased with the debt at the time of the agreement being made, with such interest as the stock would have produced in the mean time. —Sanders *v.* Kentish, 8 T. R. 162—Maddock *v.* Rumball, 3 East. 304. And where stock was lent upon a bond to replace it on a given day, with interest at 5*l.* per cent. in the mean time upon the sum which the stock produced, the stock not having been replaced at the time, it was held that the lender was entitled to the amount produced by the sale of the stock with interest, and not compellable to accept the amount of the stock, (which had fallen,) with the dividends which had accrued thereon in the mean time.—Forrest *v.* Elwes, 4 Vesey, 492. [This case was not argued on the ground of Usury.] But where a certain amount of stock was to be transferred, or the value thereof, at a particular day then past, when a loan ought to have been repaid, or paid at the option of the lender with interest in the mean time, the Master of the Rolls ruled the contract to be usurious, as it reserved the capital with legal interest, and likewise a contingent advantage, without putting either capital or interest in any kind of risk, and it was usurious to stipulate for the chance of that advantage.—Barnard *v.* Young, 17 Vesey, 44.

(g) Of Contracts respecting the Sale or Transfer of Stock.

Where bankers agreed to give credit in account to a person who was indebted to them for a certain sum, for which he was to purchase stock of a certain amount, and which at the then current price was more than the money credited would purchase, and account for the dividends as from the last dividend day, and the sum was credited accordingly and drafts honoured by the bankers; it was held that the contract was usurious, though the price of stocks was less than when several of the sums were advanced; but that the party was entitled to credit in account for the amount agreed upon.—Boldero *v.* Jackson, 11 East. 612. Where money was advanced upon the security of Omnium, which was to be taken back by the borrower at a fixed advance of price at a day certain, and the difference in price exceeded 5*l.* per cent. for the period, the transaction was ruled to be usurious—Smedley q. t. *v.* Roberts, 2 Camp. N. P. 607. Where a person having a vested interest in stock, which he could not transfer till a future day, sold his interest in the principal and dividends at a rate below the current price, it was holden not usurious.—Pike *v.* Ledwell. 5 Esp. N. P. 164.

No. I. 37 H. VIII. c. 9.

bill plaint or information, in which action bill plaint or information no wager of law essoin or protection shall be admitted or allowed.

To what Lands and Assurances this Statute extendeth not.

VI. Provided alway, and be it enacted by the authority aforesaid, That this Act nor any thing therein contained shall not in any wise extend to any lawful obligation indorsed with a condition, nor to any statute or recognizance made and to be made for the payment of a lesser sum, so that the same obligation statute or recognizance be made for a true just and perfect debt or for the performance of any other true covenants made or to be made upon a just and true intent had between the parties,

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(h) As to Annuities for Years.

The purchase of an annuity for years with a power of redemption does not fall within the Statutes of Usury if *bona fide* made, and there is no obligation to re-purchase, although the annuity may exceed the legal rate of interest. Thus, where D. had agreed to purchase a lease for 40 years, subject to the rent of 5*l.* and not having the money, B. by agreement with him, paid the 300*l.* and took an assignment to himself, and then demised the premises to B. for 39 years at the rent of 35*l.* of which the original rent was to be part; and D. covenanted to pay the rent, &c.; and B. agreed, that if D. should pay him 300*l.* at the end of four years, the rent should cease, and he would reconvey the estate. By Hale, C. J. this was not Usury within the Statute, for D. was not obliged to pay the 300*l.* but at his election might pay it if he choose, and thereby determine the rent and have the term, so that in effect it was only a bargain for an annuity of 30*l.* for 39 years, to be secured in this manner, but determinable sooner if the grantor pleased; but the grantee had no remedy to recover the 300*l.* if the grantor did not think proper to pay it; but if B. had any security for the re-payment of the money, or by any collateral agreement it was to have been repaid, that had been Usury—Rex *v.* Dury, 2 Lev. 7; and in Tanfield *v.* Finch, Cro. Eliz. 27, it was held, that the giving 566*l.* for an annuity of 120*l.* for twenty-three years was no usury, where there was no previous communication to have any consideration for the loan of the 566*l.*; but Bell, Chief Baron, said, that if two men speak together, and one desireth the other to lend him 100*l.* he will give him above 10*l.* per annum, and for an evasion of the Statute they invent this practice, that he shall grant to the other 30*l.* per annum out of his land for 10 years, this is Usury, although he never have his 100*l.* again. But if *bona fide* one buyeth an annuity of 40*l.* for ten years for 100*l.* this is no Usury, if the first communication was not corrupt—see Symonds *v.* Cockerill, Noy. 151. cited, 3 B. & P. 160, to the same effect.

(i) On Contracts of Hazard.

It is a settled point, that if the principal sum advanced is by the terms of the contract fairly put in hazard, no Usury is incurred by taking more than the legal rate of interest, but that the Usury is not prevented by a hazard which only affects the interests, or as it is laid down by Dodderidge, C. J. in Roberts *v.* Trenayne, Cro. Jac. 507. if I lend 100*l.* to have 120*l.* at the year's end upon a casualty; if the casualty goes to the interest only, and not to the principal, it is Usury; for the party is to have the principal again come what will; but if the principal and interest are both at hazard, it is then not Usury.

The reasonableness of this distinction is not quite evident, for if the chances are equal upon which double the interest is to be paid, and the whole interest is to be lost, it would seem to be a fair wager of the amount of the interest, but it is a distinction which is always recognised and acted upon.

Upon the general doctrine of placing the principal in hazard, it was ruled, in the famous case of Lord Chesterfield *v.* Janson, 2 Ves. 125. 1 Ath. 301. 1 Wils. 286. that a *post obit* bond on receiving 5000*l.* to return 10,000*l.* if John Spencer the obligor survived his grandmother, the Duchess of Marlborough, was not usurious. Upon this principle all bottomry contracts are supported. So an agreement in consideration of 100*l.* to pay 80*l.* to each daughter of a person having five who shall be living at the end of ten years—Bedingfield *v.* Ashley, Cro. Eliz. 741.

But a mere colourable hazard will not take the case out of the Statute. Thus, in the preceding case, the Court held, that if the contract had been that he should pay at the end of one or two years 300*l.* if any of the children were alive, that had been Usury—so in Mason *v.* Ahdy, Carth. 67; and by the name of Mastin *v.* Abdee, Show 8. Holt, C. J. said, that dying within six months was no hazard, and therefore usurious—and see Richards *v.* Brown, Cowp. 770.

It is clear that the hazard must be one arising out of the terms of the contract itself, and not the common hazard, that the contract may not be performed from the insolvency of the borrower; and upon this ground it was ruled, that a loan upon which the lender was, beyond legal interest, to receive a certain portion of the profits of a trade, was usurious, although it was objected that by receiving a share of

No. I.
37 H. VIII. c. 9.

other than in cases of usury interest corrupt bargains shift or chevisance; ne yet shall extend to any recovery fine feoffment release confirmation or grant made or to be made upon condition with a true intent, other than to such recoveries fines feoffments releases confirmations and grants as shall be made upon condition extending to usury interest corrupt bargains shifts or chevisance; any thing in this statute contained or any law statute or ordinance heretofore had used or made to the contrary notwithstanding.

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the profits he would, with respect to third persons, render himself liable for all the debts and losses—Morse *v.* Wilson. 4 T. R. 353.

(k) Of Loans accompanied by Services.

The stipulating by a factor for a higher commission, beyond legal interest, on his advances of money than he would have had if he had not furnished the money, was ruled by Lord Ellenborough, at *Nisi Prius*, to be usurious—Harris *v.* Boston, 2 Camp. 348 An assignment of a contract for the purchase of timber to secure certain advances with charges, and 200*l.* as a compensation for trouble in the business, was ruled not to be usurious on the face of it, it not appearing that any part of it was intended as an additional bonus for the advance of the money—Palmer *v.* Baker, 1 M. and S. 56.

(l) Of Penalties in Case of Non-payment of the Principal.

In Burton's case, 5 Co. 69. b. it is laid down, that an agreement to pay 20*l.* a year from Michaelmas next, if 100*l.* is not paid by Michaelmas, is not usurious, for the party may repay it before Michaelmas without interest, if this was the true intent, and there are several other authorities to the same effect. Mr. Plowden mentions the case of Moore *v.* Battie, before Lord Keeper Henley, Amb. 371, as overruling this doctrine; but the case was not apparently considered in that view by Lord Henley himself, nor does any such inference result from it; there being no intention in that case that the borrower should at any time repay the money without interest. I should entertain, however, very little doubt that it is an agreement against which a Court of Equity would relieve upon the payment of the principal and legal interest, and the contract would be regarded with much suspicion in a Court of Law, as furnishing evidence of an actual intention for the payment of usurious interest.

(m) Of the Interest.

With respect to the interest or other compensation to be paid, in Barnes *v.* Worlich, Cro. Jac. 25. Yelv. 30. 1 Roll, 510. Moor 644, (by the name of Worley's case, and see Dalton's case, Noy 171,) a question was raised, whether it was usurious to stipulate for the payment of interest at the full rate allowed by Statute for half a year. The ground of the doubt was, that for the space between the end of the half year and the end of the half year interest might be made on the interest, so that more than the rate allowed would be made on the whole sum for the year; and the importance of this consideration would become very manifest by reversing the case, and reflecting that a repayment of principal with simple interest, at the end of ten years, would be a very moderate compensation, supposing the legal interest to be the actual value for a loan or forbearance for one year. The decision was in favour of the legality of the contract; but it was said, that if the lender had agreed to take his money for the forbearance instantly when he lent it, that had made the assurance void, for there he had not lent the entire sum for one year, and the other had not the use of his money according to the intention of the law.—See *ex parte* Bevan, 10 Vesey, 223, as to stipulations for half-yearly settlements, and charging interest in the balance in mercantile transactions. In Lloyd *v.* Williams, 3 Wils. 252. 2 Bl. 792, it appears, by the later report, that Sir Wm. Blackstone was of opinion, that interest might as lawfully be received beforehand for forbearing, as after the term is expired for having forborne, and that it should not be reckoned as merely a loan of the balance, else every banker in London, who takes five per cent. for discounting bills, would be guilty of Usury.

The deducting, in the first instance, the full legal rate of interest, upon the discount of bills and notes, is fully agreed not to be usurious. But in Marsh *v.* Martindale, 3 B. & P. 154. it was considered that that doctrine arose merely out of the course of trade, and Lord Alvanley, in delivering the judgment of the Court, said, "If nothing more has been done in this case than what has always been done by way of accommodation among merchants, the transaction was not usurious; but the rule must be confined strictly to that sort of transaction, for if discount be taken in an advance of money, without the negociation of a bill of exchange, it will amount to usury, as appears clearly from the cases which were cited in the agreement," (viz. Barnes *v.* Worledge, and Dalton's case above cited,) and in the principal case it being agreed, that 5000*l.* should be paid at the end of three years, for advances amounting to 4250*l.* or in other words, that three years' interest of 5000*l.* to be paid at the expiration of that time, should be deducted in the first instance, the case

No. I.
37 H. VIII. c. 9.

was holden to amount to usury. In a preceding part of this note, the case has been mentioned with reference to the question, whether the nature of the transaction was such as to render the law of usury properly applicable.

The taking of excessive interest is usurious, although taken in the form of rent, at the rate of 50*l.* for half a year for a house worth only 20*l.* a year—Bedo *v.* Jackson, Cro. Jac. 440; and see the observation of Lord Hardwicke to the same effect, in Adlington *v.* Cann, 3 Atk. 154; see also Jetson *v* Brooke, Cowp 793.

In Morisset *v.* King, 2 Bur. 821. in consideration of 100*l.* advanced by M. to be repaid without interest at the end of four years, K. agreed to board the daughter of M. and that she should be co-partner with his wife, in the business of a milliner, &c. the contract was ruled not to be usurious, as K. might receive so much advantage by the partnership as to be worth the consideration.

(n) How far the Question of Usury depends upon the Intent of the Parties, as a Question of Fact.

The question of usury often depends upon the particular intent of the parties to the contract, so as to reduce the point in dispute to a mere question of fact for the decision of the jury, whether it was or was not intended to take a greater interest than the law allows upon the loan or forbearance of money. It has been already stated as an established principle, that if the real nature of the transaction, as founded on the intention of the parties, be found by the jury to be an usurious loan, no form or colour, which may be given to it, will prevent the law for restraining such transaction from having its full operation, and several cases were referred to as supporting and illustrating that proposition. In the case of Hamnett *v.* Yea, 1 Bos. & P. 144. where upon discounting a bill, bills at thirty days and smaller periods were charged as cash, Eyre, C. J. observed to the jury, that the bills appeared to be in the nature of a remittance of the borrower's money to London, and if the plaintiffs had not taken more than a reasonable compensation for their trouble, unless indeed the mode of payment had been made a term on which alone the bills would be discounted, it was not usury; and the jury having found the transaction not to be usurious, his Lordship, upon application for a new trial, said that whether more than 5*l.* per cent. was intentionally taken upon any contract for forbearance, was a mere question of fact for the consideration of the jury, and must always be collected from the whole of the transaction as it passes between the parties—and he was of opinion, that it never could be determined that any particular fact constitutes or amounts to usury till all the circumstances, with which it was attended, had been taken into consideration—and, in the course of his judgment, he repeatedly expressed himself to the same effect, shewing that under the circumstances there was just ground to warrant the conclusion which the jury had drawn; and, the other judges concurring in the same doctrine, a new trial was refused.

Where the intention of the parties was not to commit usury, but the deed was so drawn by mistake of the scrivener as upon the face of it to be usurious, it was held that the statute did not attach. The agreement was on the 23d of May for a loan for a year, and the bond was made for payment of the principal and a year's interest, on the 24th of May next ensuing, and there was a question whether this should be construed to mean the 24th of the same May, or the 24th of May in the following year, but all the Court held, that although it should be expounded to refer to the same month and year, which was the next day, yet as the agreement was found to be to make the loan for a year, and that the assurances were for payment at the end of the year, and by the scrivener's mistake it was made payable the next day, it was not usury within the statute, for there was not any corrupt agreement betwixt them, but a true and absolute agreement, and the act of a stranger should not bring the party within the danger of the statute—Buckley *v.* Guildbank, Cro. Jac. 678; so where the plaintiff by his replication alleged that the agreement was for forbearance for a year, and by the scrivener's mistake it was made payable at the half year's end, and he not knowing thereof accepted the bond, the Court ruled that such an allegation might be well made; for it was the shewing of the true agreement, that no interest was to be paid by the said agreement but such as stood with the law—Nevison *v.* Whitley, Cro. Car. 501; and where the plaintiff replied, that it was agreed that he should lend to the defendant 50*l.* at 5*l.* per cent. and that the scrivener should take a lawful bond, with condition to pay interest at 5*l.* per cent. and that the scrivener, in the absence of and without the notice of the plaintiff, took the bond whereby, by the mistake of the scrivener, 2*l.* 10*s.* was inserted for six months, and traversed the corrupt agreement, it was ruled to be the same case with the preceding—Bush *v.* Buckingham, 2 Vent. 83; so a bill given for excessive interest, by a mistake of calculation, was held available for the sum really due.—Glassfurd, *v.* Lang, 1 Camp. N. P. 149.

In Le Grange *v.* Hamilton, 4 T. R. 613. a bond was given for payment of 100*l.* with interest, at 5*l.* per cent. in payments of 20*l.* yearly, by quarterly payments of 5*l.* until the whole should be paid, and a memorandum was indorsed, that at the

No. I.
37 H. VIII. c 9.

end of each year the *year's interest due* was to be added to the principal, and then the 20*l* received was to be deducted and the balance remain as principal. Lord Kenyon thought the consideration was, that a year's interest should be charged on the whole, without allowing for the intermediate payments, which would be usurious —the other judges thought, that the memorandum was only for the purpose of adding the interest, which became due in the course of the year, to the principal, so as to make the whole carry interest till part of it was again reduced—and Ashurst and Grose J. held that if the Court could by any reasonable construction consider it not to be usury, they were bound to do so.

But if the agreement entered into is such as appears to the Court to be usurious, the case falls within the statutes, although the parties might not be aware that they were transgressing the law —Thus in Marsh v. Martindale, 3 B & P. 154. already twice cited upon the principal points, Lord Alvanley said, "I stated to the jury, that if a man agree to take more than 5*l* per cent. the law declares that to be such an agreement as is corrupt, whether the party thought at the time he were acting contrary to the law or not, and though the jury have found, that the plaintiff did not think he was acting contrary to the law, there is nothing in that finding to prevent us examining the transaction, and declaring it to be corrupt if it appear to us to be so in point of law, without sending the case back to a jury to find the corruption." And in Barnard v. Young, 17 Vesey, 44. already cited, where a contract to pay money or replace stock, at the option of the lender, was holden usurious, the master of the Rolls, after stating his opinion upon the contract, added "Therefore, though it was not probably so intended, this is in fact an usurious contract."

Part II. On the Penalties of Usury.

In an action for the penalties the essential charge is, as has been observed, the taking usurious interest; for, however usurious the contract may be, no penalty is incurred without taking such interest.

Whether the taking more than legal interest, without a previous contract for the purpose, does or does not subject the party to the penalty, seems not to be perfectly settled. In Rex v. Allen, Sir T. Raym, 196, Twisden, J. laid it down, that if the party do not contract for more than the Statute allows, and afterwards he will take more, the assurance shall not be avoided, but the party shall forfeit the treble value; as if a man, when money was at 8*l*. per cent lends money and takes bond for the same, and the Statute 12 Car. II. is made, and he will continue the old interest upon that bond, the bond shall not be avoided by such acceptance of interest, but the party shall forfeit the treble value by the Statute, but no judgment was given.

With respect to the matter stated by Twisden, by way of illustration, it seems to be agreed, that a contract made before the Statute reducing the rate of interest is no way within the meaning of the Statute, and that it is still lawful to receive the former interest in respect of such contract —See 1 Hawk. P. C. 22 sec. 12—Walter v. Peury, 2 Vern. 145. 1 Eq Ab. 288. Whether the contract, otherwise than in respect of the penalties, continues as to the higher rate, is a point upon which the two authorities last cited seem to differ.

In an anonymous case, 1 Vent. 38. temp. 21 Car. II. the information was for taking usurious interest for three quarters of a year then passed, not averring, as it seems, any preceding corrupt agreement. Upon motion in arrest of judgment, on the ground that as the time of forbearance was past the party might give what he pleased in recompence, there being no preceding agreement, the Court overruled the objection, and said they would expound the Statute strictly—and if liberty were allowed in that case, the brokers might oppress the people exceedingly, by detaining the pawn, unless they would give them what they would please to demand for the time after failure of payment In R. v. Walker, 1 Siderf. 421, (which is supposed by Mr. Plowden to be the same case) but is of Trin 19 Ch. II. the Court upon the like objection are reported to have held, that if the case was not within the Statute 12 Ch II the taking was an offence at common law, and therefore they gave judgment of fine and imprisonment.

If, after an agreement for legal interest, a subsequent agreement is made for more interest, it is usury, and the penalty is incurred by taking such interest, but it does not avoid the original contract — See Reg v. Lewel, 7 Mod. 119. In Brown v. Fullbey, 4 Leon. 13. it was the opinion of the Court, that although the usurious interest agreed upon was tendered *and the lender did tell the same*, yet, if he did not take and accept it, he did not incur the forfeiture

In Mallory v. Bird, cited Cro. Eliz 20 it is said, if one contracts to have 20*l*. for the loan of 100*l*. if he taketh nothing of the 20*l* he is not punishable by the statute; but if he taketh any thing, if but one shilling, this is an affirmance of the contract, and he shall answer for the whole contract But Ashton, J upon this case being cited, observed, that it meant one shilling above the legal interest, and such is

No. I.
37 H. VIII. c. 9.

the construction which has always prevailed in practice—see Fisher *v.* Beasley, Doug. 235.

At what Time the Penalty attaches.

As by statute 31 Eliz. c. 5. all actions and informations upon penal statutes must be commenced within the time prescribed after committing the offence, it is often a material question at what time thereby prescribed after committing the offence, it is often a material question at what time the act of taking usurious interest or compensation is complete. Upon this subject the following cases have occurred:—

The Action must be brought within a Year.

In Lloyd, q. t. *v.* Williams, upon a loan of 100*l.* for three months, it was agreed, that the borrower should give 6*l.* 5*s.*; the 100*l.* was advanced, and the borrower immediately paid the 6*l.* 5*s.* for interest by way of advance, and gave his promissory note for 100*l.* at three months; the court of C. B. held, that as the 100*l.* was actually lent by the defendant to the borrower, who received it with one hand and immediately paid the 6*l.* 5*s.* with the other hand, the offence was then completely committed, and the time being more than a year before the commencement of the action, the plaintiff could not recover. Gould, J. (according to the report of Blackstone, vol. 2, p. 794,) inclined to think that the original loan was only of 93*l.* 15*s.*, the 6*l.* 5*s.* being taken thereout; but he agreed that the plaintiff could not recover upon that action, which was brought for 300*l.* or the treble 100*l.*, the sum of 100*l.* alleged to be lent. The view of Gould, J. as to the question of loan, provided the declaration had been properly adopted to meet it, seems to accord with the opinions which have prevailed in the subsequent cases. In Fisher, q. t. *v.* Beasley, Doug. 235. J. S. borrowed 100*l.* of the defendant, for which he gave a bond, payable with legal interest at the end of six months, and also paid two guineas as a premium at the time when the money was advanced. At the end of six months the capital was repaid, with 2*l.* 10*s.* for interest; and the Court were of opinion, that the offence was not complete till the half year's interest was received. In Maddock, q. t. *v.* Hammett, 7 T. R. 184. in an action for taking usurious discount on a note of 1000*l.* it appeared that that note was discharged by giving another, still outstanding and unsatisfied. Buller, J. was of opinion at the trial, that the offence charged was not complete, for that, in order to constitute usury, there must be an usurious taking either of money or money's worth; whereas nothing had been taken by the defendants but only the note, which at present only gave them a right of action, and perhaps might never be paid; which opinion, upon an application for a new trial, was confirmed by the Court. Upon a loan of 500*l.* the borrower agreed to give something more than legal interest as a compensation, but no particular sum was agreed upon. After the execution of the securities and payment of the money, the parties went to another place, where 50*l.* was given as a compensation, and interest at 5 per Cent. on the 500*l.* was paid for several years. Such interest was adjudged usurious, in as much as the loan could only be deemed a loan of 450*l.*—Scurry, q. t. *v.* Freeman, 2. B & P. 381. So it was held in Wade, q. t. *v.* Wilson, 1 East. 195, that where a premium was given at the time of the loan, and at the end of half a year interest was received (*qua* interest) for the money lent, the usury was complete when the half year's interest was received.

Of the Locality of the Action.

An action for usury, like all other penal actions, must, by Stat. 21 James I. c. 4. be brought in the proper county. In the before-mentioned case of Scurry, q. t. *v.* Freeman, 2 Bc. p. 341, a draft was given to the defendant for the interest in Middlesex, and received by him as cash, but afterwards exchanged by him for money with a third person in London, the Court of C. B. ruled, that the venue was properly laid in London, as the draft was merely a promise to pay, and the actual receipt of the money and taking the usury was in London. Where rents were received in Middlesex, but the balance was settled in London, the venue was held to be well laid there; and Ashurst, J. seemed to think it might have been laid in either county—Scott, q. t. *v.* Brest, 2 T. R. 238. Qu. if the same opinion might not hold good in Scurry *v.* Freeman, and the draft be considered as money's worth received in Middlesex; it would often be impossible to shew where a draft had been actually passed away for value to a third person.

Of the Manner of alleging Usury.

In 1 Hawk. c. 82. s. 24, it is laid down, that in pleading an usurious contract, by way of bar to an action, you must set forth the whole matter, especially because it lay within your own privity; but that in an information on the statute for making such a contract it is sufficient to set forth the corrupt bargain generally, because matters of this kind are supposed to be privately transacted, and such information may be brought by a stranger—see also to the same effect Bedo *v.* Sanderson, Cro. Jac. 440.

The declaration or information must set forth, 1. the Taking by corrupt Agreement, 11 Rep. 58, Rex *v.* Garth, Kel. 629—Woody's Case, Cro. Jac. 104; and if the declaration is upon two loans, one of which is alleged to be corrupt and the other not, the plaintiff shall have judgment for the part that is good, it being in the nature of two several actions—*id. ibid.*

No. I. 37 H. VIII. c. 9.

2. With whom the contract was made, *cum quodam ignoto*, is insufficient—Van Henbeck's Case, 2 Leo. 39—Nasie's Case, Noy. 143. Where A. was indebted to B. and B. to C., and C. for an usurious consideration agreed to take A. for his debtor instead of B., it was held, that the contract might be stated as a loan from C. to A. Wade, q. t. *v.* Wilson, 1 East. 195. the contract may be stated for forbearance to A. alone, although B. joins in the security, *id. ibid.* A promissory note was given by A. as surety for B., and the defendant, as indorsee of the note, having taken an usurious consideration for forbearing to sue A., the transaction was held to be properly described as a forbearance to A. for money lent to A. by the defendant, and that the transaction was equivalent to a loan of money—Manners, q. t. *v.* Postan, 3 Bos. & Pul. 343.

3. In Sir Wollaston Dixon's Case, 1 Leon. 95. it was said by Wanwood, Baron, that the information had not shewn whose money it was, and therefore was not good; but, Query, if this means any thing more than that it must be set forth by whom the loan was made; the course of precedents not being to make any express averment that the money lent was the money of the defendants.

4. The Time of Taking—but this seems to be only form, as the common allegation of time in other pleadings, and the cases in which it is held to be substance seem to arise from confounding it with the next particular.

5. The time for which the forbearance is given, and which must be proved as stated. The declaration stated a contract made on the 21st of December, 1774, for giving payment to the 23d of December, 1776, and the contract proved was on the 23d of December, 1774, for giving two years, which was held to be totally different from the contract stated—Carlisle *v.* Frears, Cowp. 671. In Harris, q. t. *v.* Hudson, 4 Esp. 152, it is said to have been ruled, that the day on which the money was advanced upon an usurious contract was material, though laid under a videlicet; but the ground of the decision *comme semble* is, that the contract is alleged to be for a forbearance from that day. Where the loan was made on the 20th April by a check void for want of a stamp, and which was paid on the 21st, it was ruled, that the check, being a mere nullity, the loan did not take place till the 21st, and that being stated on the 20th, the variance was fatal—Borrodaile, q. t. *v.* Middleton, 2 Camp. 53. Cash notes are not to be accounted as cash, unless previously agreed to be received as such, and evidence that such notes were sent on the 20th and received on the 21st, the statement for forbearance from the 20th was held a fatal variance---Brooke, q. t. *v.* Middleton, 1 Camp. 445.

6. The Place where the usurious Interest was taken---but this seems merely to be venue, although, for the reason already mentioned, the action must be brought in the proper county; but as to whether it be necessary to state where the contract was made, which is only inducement, Query---see Sir Wollaston Dixon's Case, 1 Leon. 95.

Borrower a competent Witness.

It was formerly held, that the borrower upon an usurious contract was not a competent witness to prove the case, but the contrary is fully established by Abrahams *v.* Bunn, 4 Bur. 2255---Smith *v.* Prager, 7 T. R. 60.

Usury under the Statutes not punishable by Indictment, or at the Sessions.

No indictment lies on the statutes of usury, Queen *v.* Dyer, 11 Mod. 174. The sessions have not any jurisdiction of this offence, Reg. *v.* Smith, 2 Salk. 680; but in Rex. *v.* Pexley, 2 Barnadiston, 143, it was admitted, that upon the Statute of 2 Eliz. which prohibits the taking above 10*l.* per cent. the sessions have jurisdiction, though it was insisted that upon the latter statutes they have not.

Part IV. Of the EFFECT of USURY in INVALIDATING the SECURITIES.

It is a settled principle, that if money is lent upon an usurious contract, such contract and all the securities for enforcing it are void, and that no shift or contrivance can make them of any validity; and at a very early period it was established, that if a party, upon an usurious contract, gives a mortgage for securing the principal only, and a bond for the interest, the mortgage as well as the bond shall be void—Roberts *v.* Tremayne, Cro. Jac. 507. And where several bills of exchange were given to secure an advance at legal interest, together with part of a preceding usurious debt, it was ruled, that all such bills were void—Harrison *v.* Hannel, 5 Taunt. 780, 1 Marshall, 349. As to a judgment, *see infra.*

A bill of exchange given on an usurious consideration is void in the hands of an innocent indorsee, Lowe *v.* Waller, Doug. 736; and see Young *v.* Wright, 1 Camp. 141---Ackland *v.* Pearce, 2 Camp. 599. in which the Bill was ruled to be void, being drawn in consequence of an usurious agreement between the acceptor and a third person, to which the drawer was not privy.

But where a previous debt was subsisting for goods sold and delivered, and a void and usurious security was taken for delay of payment, it was ruled, that the fair debt for the goods still subsisted unimpeached by the usurious transaction, and was not a colourable pretence to cover a real loan. Gray *v.* Fowler, 1 H. B. 462. the

No. I. 58 H. VIII. c. 9.

reporter properly states in the marginal abstract, as the result of the case, the general conclusion, that a *bona fide* debt is not discharged by being mingled with an usurious contract relating to it; and see Phillips *v.* Cockayne, 3 Campb. 119---Ferral *v.* Shaen, 1 Saund. 292.

In Daniel *v.* Cartony, 1 Esp. 274, Lord Kenyon held, that a bill good in its inception was not avoided in the hands of a *bona fide* indorsee by an intermediate usurious transaction; and where a valid bill was indorsed by A. the payee upon an usurious consideration to B. who indorsed it for a valid consideration to C., who indorsed it to B.'s assignees in payment of a debt, such assignees were held to have a good title to the bill, being clothed with the equity of C.---Parr *v.* Eliason, 1 East. 92.

Notes were discounted by Plank to the defendant the drawer upon an usurious consideration and paid to the plaintiff a *bona fide* indorsee. He and the defendant, upon application for payment, gave his bond for the amount---the defendant pleaded that the bond was given for securing money lent upon an usurious contract between Plank and the Defendant, to which the Plaintiff replied, that the bond was given for a just and lawful debt, and not, &c. A verdict was given for the Plaintiff; and the Court were of opinion, that the bond was valid; but it was admitted, that if one security be substituted for another by the parties in order to get rid of the statute, the substituted as well as the original security would be void—Cuthbert *v.* Haley, 8 T. R. 390; and *vide* Ellis *v.* Warnes, Moore 752, Cro. Jac. 32. Yelv. 47. in which Warner, being indebted to Alder in 100*l.* gave him an usurious bond for 30*l.* per cent. interest; and, by way of discharging the principal, became joint obligee with Alder in a bond for the payment of a debt of 100*l.* due from Alder to the Plaintiff, and it was held, that the usury did not vitiate that security.

And where the acceptor of a bill, drawn in pursuance of an usurious contract, accepted a second bill for the purpose of raising money to take up the former, and the second bill was discounted by a *bona fide* indorsee at the legal rate of interest, it was ruled by Lord Ellenborough, that the second bill was not affected by the usury which attended the formation of the first—Dagnall *v.* Wylie, Campb. 33.

Where a bond given for the performance of an usurious contract was annulled, a fresh bond taken for the principal and interest, after deducting the payments illegally made on the former contract, were ruled by Lawrence, J. to be valid—Wright *v.* Wheeler, 1 Campb. 165. *n*—and in Barnes *v.* Hedley, 2 Taunt. 184. where an usurious contract was entered into, and securities given for the performance, and several payments made on the footing thereof, and the parties afterwards stated a fair account of principal and interest, and the borrower promised to pay the balance, whereupon the securities were cancelled, the promise was adjudged to create a legal debt. See Dagnall *v.* Wigley, 11 East. 43. in which accommodation bills were held not to be void in the hands of a fair indorsee, in consequence of an understanding that a broker should have an illegal commission upon discounting them.

In assumpsit if it appear either upon the evidence or from the plaintiff's express shewing in his declaration, that the contract was usurious, he cannot recover. But a specialty cannot be avoided by usury appearing in evidence, or on the face of the condition, but it must be pleaded—1 Hawk. c. 82. s. 20. and the cases there cited; and see as to the particularity required in such pleading the passage already cited.

Cases in Equity respecting Usury.

Although a Court of Equity will not, in general, relieve against an usurious contract, except upon the terms of paying the principal with legal interest, the Master of the Rolls in Barnard *v.* Young, 17 Vesey 44. (already cited upon other points) sustained a suit by the assignees of a bankrupt for delivering up an assignment of stock founded upon a contract which he held to be usurious, observing, that if the assignment was usurious, the consequence must follow that it is wholly void.—The party in whose favour an usurious contract has been executed, cannot make use of it for any purpose whatsoever. The other party does not seek relief to have that contract cancelled, or other relief directly against it, but only to enforce his own right, contending that it is not to be impeded by having this usurious contract set up to obstruct it.

Where securities had been given for legal interest and more was afterwards received by taking advantage of the necessitous circumstances of the borrowers: upon a suit for redemption, the account was directed to be taken upon the principle of applying the payments beyond legal interest in satisfaction of the principal, and in case the lender was overpaid, that he should refund; Lord Talbot said, he did not determine how it would be if all the securities were delivered up—Bosanquet *v.* Dashwood, Temp. Talb. 37; and as to relief in equity upon payment of principal and legal interest—See Henkle *v.* Royal Exchange Comp. 1 Ves. 319—Scott *v.* Nesbitt, 2 Bro. Ch. 641—Benfield *v.* Solomons, 9 Ves. jun. 84. In Scott *v.* Nesbitt, the relief was applied in taking an account of debts and assets before the master, the plaintiffs having recovered judgment at law upon an usurious bond. But a Bill in

No. I.
37 H VIII.
c. 9.

Equity requiring a discovery in usury, is generally demurrable to, as tending to subject the defendant to penalties, as to which see Chauncey *v* Tahourden, *2* Atk. 322 —Anon *2* Eq Ab. 70, pl. 7—Harrison *v.* Southcote, 1 Atk. 539.

In cases of bankruptcy if usury is made out, the security is cut down altogether, not leaving the party a creditor for that for which it was actually advanced. Per Lord Eldon, Beaufield *v.* Solomons, 9 Ves. 84. And this may be taken for granted from the case above cited, of Barnes *v.* Hedley, which was an issue directed by the Lord Chancellor to try whether the bankrupt to whom usurious securities had been given and afterwards destroyed, was indebted to Webb. Bankruptcy.

In *ex parte* Savener, 3 Vesey and Beames 14, the Lord Chancellor said, "Upon the notion of the equitable jurisdiction in bankruptcy we go much further than Courts either of Law or Equity at law you must make out the charge of usury, and in equity you cannot come for relief without offering to pay what is really due, and must either prove the usury by legal evidence, or have the confession of the party, but in bankruptcy it has been considered sufficient to suggest usury in a petition supported by affidavits merely upon information and belief, putting the party to prove against himself, for the purpose not of giving him his real debt, but of cutting him off from all relief. It is, I admit, now too late to alter that."

In Edmonson *v.* Popkin, 1 B. and P 270, the Court of Common Pleas set aside a warrant of attorney and judgment upon an allegation of usury, as they were not to decide the question of usury in a summary way, and in order that the question of usury might be tried, which would be shut out if the judgment was allowed to stand —but the case passed without discussion as to the question of the judgment standing as a security for principal and legal interest, and in Hindle *v.* O Brien, 1 Taunt. 413, upon a similar application the Court directed the money levied to be paid into Court, and referred it to the prothonotary to take an account of all matters between the parties, and to compute principal and legal interest. Lawrence, J concurred in this opinion upon the ground of the defendant having paid part of the money, and intimated, that if the defendant had applied upon the first giving the warrant of attorney he would have been entitled to have set it aside, but it is very difficult to discern any reason for this distinction, and the other judges (Heath and Chambre) decided the case upon the general principle, that as the application was to the equitable jurisdiction of the Court, the party applying must do what is equitable, and that if he applies to the equity of the Court he waives their legal jurisdiction Of Relief in Case of Warrants of Attorney to refuse Judgment.

In Fitzroy *v* Gwillim, 1 T R. 153, it was ruled, that the plaintiff could not maintain trover for a pledge given to secure an usurious loan without first tendering the principal and legal interest, it being deemed an equitable action. Trover.

In Tomkins *v.* Burnet, 1 Salk 22, at N. P before C. J Treby, it was held, that a party could not maintain an action for money had and received, to recover what had been paid upon an usurious contract, and the case is reported as being decided upon the ground of his being *particeps criminis* and that *volenti non fit injuria*, but it is evident upon the whole of the report, that the money borrowed had not been repaid.—Lord Mansfield in Clarke *v* Shee, Cowp 200, said that the case of Tomkins *v* Burnet has been long exploded, and in Smith *v* Bromley, Doug 697, *n.* Lord M. said, that so far as principal and interest went, the debtor was bound in natural justice to pay and therefore could not recover it back, but for all above legal interest equity would assist the debtor, or an action would lie to recover back the surplus if the whole had been paid, and he distinguished between a violation of the laws of public policy, and laws calculated for the protection of the subject against oppression and fraud. Money had and received.

The case of Astley *v.* Reynolds, 2 Str. 915, in which a party who had been compelled to pay more than legal interest upon the redemption of a pledge, was allowed to recover it back, is sometimes cited upon this subject, but is not very applicable, as in that case there does not appear to have been any usurious agreement

Contracts for payment of compound interest are not illegal so as to be affected by the Statute of Usury, but are relieved against it in equity as being oppressive. Thus in the case of Sir Thomas Meers, cited by Lord Talbot in Bosanquet *v.* Dashwood, Rep. Temp. Talbot 37, a covenant was inserted in a mortgage, that if interest was not paid punctually at the day, it should from that time, and so from time to time, be converted into principal, the Lord Chancellor relieved against the covenant as unjust and oppressive.—So in Broadway's case, Broadway *v.* Morecraft, Mosely 247 —in Lord Ossulston *v.* Lord Yarmouth, 2 Salk. 449. Lord Cowper held the clause to be void and of no use, and said to make interest principal, it is requisite that interest be first grown due, and then an agreement concerning it may make it principal. Lord Talbot said, that the reason is because all these cases carry somewhat of fraud with them, not such a fraud as is properly deceit, but such proceedings as lay Of Compound Interest.

No. I. H. VIII. c. 9.

a particular burthen or hardship upon any man, it being the business of this Court to relieve against all offences against the law of nature and reason—See 9 Vesey 223, *ex parte* Bevan, as to settling accounts at the end of six months and carrying on interest, and the observation as to mercantile transactions where there is no agreement to lend, but they stipulate for mutual transactions, each making advances. Lord Eldon says, he admits that cannot be applied to a real security, and you may not when the debt comes to a certain sum take a real security and 5*l.* per cent. I do not conceive that when any debt is ascertained as due for principal and interest, it was his Lordship's intention to lay down, that a valid agreement could not be entered into for a valid security for the whole with interest thereon. In looking at the cases in which agreements for compound interest are relieved against as oppressive, if the question be asked wherein the oppression consists? the true answer seems to be, in compelling the borrower who has broken his engagement, to place the lender in the same situation as if he had performed it; as the lender may possibly have been obliged to borrow at interest the amount he was entitled to receive, and have incurred the actual expense of paying that compound interest which he has, at least, been wrongfully prevented from acquiring; and it is very familiar in Courts of Equity to order rests in taking an account where there has been any breach of confidential duty, I conceive in case of fraud.

In the late case of Tarleton *v.* Backhouse, Coop. 231, the contract was for the sale of a partnership interest for 40,000*l.* to be paid with interest by instalments, the interest at 5*l.* per cent. on such parts thereof as should from year to year remain due to be added to the principal, and the several yearly payments were computed and bonds given for the same accordingly. The case was argued on the ground of the transaction being not a loan but a sale. The Lord Chancellor was of opinion, "that as the defendant might at the end of every year have brought an action and have had judgment for the principal and interest then due on the bonds, in equity the bonds could not be affected with usury, as the sum might be considered as having been called in and the instalments paid." It is obvious that this reasoning which I consider to be perfectly just in principle, would (authority out of the question) extend to all contracts for the payment of compound interest on loans.

Lease & Loan.

In several cases before Redesdale, as Lord Chancellor of Ireland, relief was given against leases granted by the borrowers to the lenders of money, and which in that country appears to have been a frequent practice, and the subject is familiarly described by the expression of lease and loan. See Browne *v.* O'Dea, 1 S. and L. 115—Drew *v.* Power, *ib.* 182—Molloy *v.* Irwin, *ib.* 310—Gubbins *v.* Creed, 2 S. and L. 218, though a lease for 999 years be made at the full value.—See also the following cases which are subsequent to Lord Redesdale's resignation, and in which the inclination of the Court is against extending the doctrine in question. Meredith *v.* Saunders, Dow. P. C. 514—Prior *v.* Dumphy, 1 Ball. and B. 27—Willen *v.* Browne, *ib.* 426—Corbet *v.* Segrove, 2 B. and B. 98.

Of Interest at Law on common Contracts.

It does not fall within the object of this note to enter into a discussion of the construction or effect of contracts with respect to interest, but I will take the liberty of so far transgressing the limits of my proper subject as to advert to the question of allowing interest upon simple contracts without express stipulation. I certainly remember many cases in which juries have been supported in giving interest by way of damages for the detention of the debt, and the case of Holdepp *v.* Otway, 2 Saund. 102, seems a strong authority upon the subject. In a case of Wrigley *v.* Seddon, for the salary of a curate, tried before Buller, J. at Lancaster, March Assizes, 1790, I distinctly remember the jury giving a verdict for interest upon the recommendation of the Judge, and in the case of the Huddersfield Canal Company *v.* Buckley, 7 T. R. 36, where the defendant paid into Court the amount of the call which he was liable to, without interest, and the decision was in his favour upon the principal points in question, so that the question of interest, which only amounted to 10*s.* became merely what is called a Norfolk groat, and the jury having given interest, the judgment was for the plaintiff for that amount, and Lord Kenyon said, There is no doubt but the jury may give interest, not *eo nomine* as interest, but as damages for the detention of the debt, for non performance of the contract.—I apprehend, however, that the opposite course of subsequent authorities to the contrary is so strong, that nothing less than the interposition of the legislature can avail, in restoring the power formerly exercised. It is to be lamented, that in establishing these authorities, the case which has been last cited was not sufficiently adverted to.

In Trelawney *v.* Thomas, 1 H. B. 308, upon assumpsit for work and labour and money paid, the Court held that the jury might, in their verdict, calculate interest on the money really advanced, but not on the damages for work and labour. The leading case in support of the modern doctrine is Walker *v.* Constable, 1 B. and P. 306, in which the Court of Common Pleas upon the supposed authority of Moses *v.*

No. I.
37 H. VIII. c. 9.

Mc. Ferlan, 2 Bur. 1005, ruled, that in such action the plaintiff could recover nothing but the net sum received, without interest. It is clear, that Moses *v.* Mc. Ferlan contains nothing directly applicable to the immediate question, and only bears upon it as being a general exposition of the liberality of the principles upon which that action depends. At a very early period after the decision of Walker *v.* Constable, I took the opportunity of expressing my sentiments respecting it in an essay in the action for money had and received, p. 121, and see Tappenden *v.* Randall, 2 B. and P. 467 —Hogan *v.* Page, 1 B. and P. 337.

In Mountford *v.* Willes, 2 B. and P. 337, the defendant by note in writing, engaged to be answerable for goods furnished to a third person; at the bottom of the note was written "Credit till Christmas," and the Court held the plaintiff entitled to interest from the time mentioned in the note. But in Gordon *v.* Swan, 12 East. 419, when goods were sold by contract in writing for a price payable at six months, and the jury upon a writ of inquiry declared their willingness to give interest as well as principal, the under sheriff directed them, that in point of law the plaintiff was not entitled to recover interest, and upon an application to set aside the inquisition, Lord Ellenborough thought the contract only meant, that the vendee at all events should not be called upon for payment till the time given, but that it was still a contract for the sale of goods, and he thought the giving of interest should be confined to Bills of Exchange and such like instruments, and to agreements reserving interest, and the rule was refused. And in Calton *v.* Bragg, 15 East. 223, the Court of King's Bench decided, upon very full argument, that interest could not be recovered upon a simple contract for money lent, assuming such to be the established practice.—Lord Ellenborough said, that if the rule for allowing interest should be carried further than it had been, it must be done by the legislature; but where goods were sold upon an agreement to pay by bill at a certain date, it was held that as interest would have run upon the bill if given, it might be recovered in an action for the price of the goods brought after the time when the bill would have become due, Minchull *v.* Porte, 13 East. 98. It is a constant course in a Court of Equity upon giving relief in respect of money improperly obtained, to charge the defendant with interest, and certainly it is a very great hardship that a party who has improperly obtained the money of another, for which the only remedy is at law, should be enabled to deprive the injured person from the fruits of his property for the whole time that he can stave off the recovery of it.—See Jones *v.* Becker, 2 Camp. 428.—Poole *v.* Moult, East.

According to the ancient law of France, although contracts for interest were generally unlawful as being usurious, interest was allowed by way of damages from the time of commencing judicial proceedings for the recovery of the debt.

[No. II.] 13 Elizabeth, c. 8.—An Act against Usury.

13 Eliz. c. 8. The Statute of 37 H. 8. c. 9. revived, and the Statute of 5 & 6 Ed. 6. c. 20. repealed, both which were made against Usury, &c. 3 Inst. 151. 2 Roll. 240. Dyer 376. Cro. El. 20, 27.

'WHEREAS in the Parliament holden the seven and thirtieth year of the reign of our late Sovereign Lord King HENRY the Eighth, of famous memory, there was then made and established one good Act for the reformation of usury: By which Act the vice of usury was well repressed, and specially the corrupt chevisance and bargaining by way of sale of wares and shifts of interest: And where since that time by one other Act made in the fifth and sixth years of the reign of our late Sovereign Lord King EDWARD the Sixth, the said former Act was repealed, and new provisoes for repressing of usury devised and enacted: Which said latter Act hath not done so much good as was hoped it should, but rather the said vice of usury and specially by way of sale of wares and shifts of interest, hath much more exceedingly abounded to the utter undoing of many gentlemen merchants occupiers and others, and to the importable hurt of the commonwealth as well for that in the said later Act there is no provision against such corrupt shifts and sales of wares as also for that there is no difference of pain forfeiture or punishment upon the greater or lesser exactions and oppressions by reason of loans upon usury:'

The Statute of 5 & 6 Ed. 6. c. 20. repealed, and the Statute of 37 H. 8. c. 9. revived. 1 Haw. P. C. 82.

II. Be it therefore enacted, That the said later statute made in the fifth and sixth years of the reign of King EDWARD the Sixth, and every branch and article of the same, from and after the five-and-twentieth day of *June* next coming shall be utterly abrogated repealed and made void: and that the said late Act made in the said seven and thirtieth year of King *Henry* the Eighth, from and after the said five-and-twentieth day

No. II. 13 Eliz. c. 8.

of *June* next coming, shall be revived and stand in full force strength and effect.

III. And be it further enacted, That all bonds contracts and assurances, collateral or other, to be made for payment of any principal or money to be lent or covenant to be performed upon or for any usury in lending or doing of any thing against the said Act now revived, upon or by which loan or doing there shall be reserved or taken above the rate of ten pounds for the hundred for one year shall be utterly void.

All Contracts and Assurances whereby above 10*l.* in the 100*l.* shall be reserved, shall be void. Noy. 2. Hetley 25. Rast. 669.

The Penalty of Brokers and Drivers of usurious Bargains. Co. Entr. 435.

IV. And be it further enacted, That all brokers solicitors and drivers of bargains for contracts or other doings against the said statute now revived, whereupon shall be reserved or taken more than after the rate of ten pounds for the loan of one hundred pounds for a year, shall be to all intents and purposes judged punished and used as counsellors attornies or advocates in any case of *præmunire*.

He that taketh 10*l.* or less for the Loan of 300*l.* shall forfeit the Interest only. Cro. Jac. 253. 5 Co. 69.

V. 'And forasmuch as all usury being forbidden by the law of God is sin and detestable,' Be it enacted, That all usury loan and forbearing of money or giving days for forbearing of money, by way of loan chevisance shifts sale of wares contracts or other doings whatsoever for gain mentioned in the said statute, which is now revived, whereupon is not reserved or taken or covenanted to be reserved payed or given to the lender contracter shifter forbearer or deliverer, above the sum of ten pound for the loan or forbearing of a hundred pound for one year or after that rate for a more or lesser sum or time, shall be from the five-and-twentieth day of *June* next coming punished in form following; that is to say, That every such offender against this branch of this present statute, shall forfeit so much as shall be reserved by way of usury above the principal for any money so to be lent or forborn: All such forfeitures to be recovered and employed as is limited for forfeitures by the said former statute now revived.

What Magistrates may hear and determine the Offences aforesaid.

VI. And be it further enacted, That justices of *Oyer* and *Determiner* and justices of assise in their circuits, justices of peace in their sessions, mayors sheriffs and bailiffs of cities, shall also have full power and authority to inquire hear and determine of all and singular offences committed against the said statute now revived.

The Statute of 37 Hen. 8. c. 9. shall be construed strongly for the repressing of Usury.

VII. And be it further enacted, That the said statute now revived shall be most largely and strongly construed for the repressing of usury, and against all persons that shall offend against the true meaning of the said statute by any way or device, directly or indirectly.

VIII. Provided alway, That this statute doth not extend nor shall be expounded to extend unto any allowances or payments for the finding of orphans, according to the ancient rates or customs of the City of *London* or any other city where like order is for the custody of orphans and their goods, as is in the said City of *London*.

In what Case an Offender shall be also punished by the Ecclesiastical Law.

IX. Provided always, and be it further enacted by the authority aforesaid, That if any person or persons shall from and after the said five-and-twentieth day of *June*, offend contrary to the said statute revived by this present Act, made in the seven and thirtieth year of the reign of the said late King *Henry* the Eighth; That then all and every such offender and offenders shall and may also be punished and corrected, according to the ecclesiastical laws heretofore made against usury: And that all and every person and persons offending in usury shifts or chevisance against this present Act, and not taking or receiving but only after the rate of ten pounds in the hundred or under for a year, shall be only punished by the pains and forfeitures provided and appointed by this Act against such as shall not take or receive over and above the rate of ten pounds in the hundred for a year, and not otherwise. This Act to continue and endure for and during the space of five years next after the end of this present Parliament, and from thence unto the end of the first session of the Parliament then next ensuing.

X. And be it further enacted by the authority aforesaid, That if this present Act shall not be continued in the first session of the Parliament

No. II. 13 Eliz. c. 8.

next ensuing the said term of five years, and then in the same session no other statute or provision made against usury or corrupt chevisance; That then all and every the laws and statutes repealed by this Act shall remain and be of such like force and effect as if this present Act had never been had ne made. (21 Jac. 1. c. 17.) made perpetual by 39 Eliz. c. 18.

[No. III.] 21 James I. c. 17.—An Act against Usury.

21 Jac. I. c. 17. 37 H. 8. c. 9. 13 El. c. 8. None shall take above the Rate of Eight Pounds for the Loan of an Hundred Pounds for a Year.

'WHEREAS at this time there is a very great abatement in the value of land and other the merchandizes wares and commodities of this kingdom, both at home and also in foreign parts whither they are transported; and whereas divers subjects of this kingdom as well the gentry as merchants farmers and tradesmen, both for their urgent and necessary occasions for the following their trades maintenance of their stocks and employments, have borrowed and do borrow divers sums of money wares merchandizes and other commodities; but by reason of the said general fall and abatement of the value of land and the prices of the said merchandize wares and commodities and interest in loan continuing at so high a rate as ten pounds in the hundred pounds for a year, doth not only make men unable to pay their debts and continue the maintenance of trade, but their debts daily increasing they are enforced to sell their lands and stocks at very low rates to forsake the use of merchandize and trade, and to give over their leases and farms and so become unprofitable members of the commonwealth to the great hurt and hinderance of the same:'

II. Be it therefore enacted by the King's most excellent Majesty the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, That no person or persons whatsoever from and after the four-and-twentieth day of *June*, which shall be in the year of our Lord one thousand six hundred twenty and five, upon any contract to be made after the said four and twentieth day of *June*, shall take directly or indirectly for loan of any monies wares merchandize or other commodities whatsoever above the value of eight pounds for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum or for a longer or shorter time; and that all bonds contracts and assurances whatsoever made after the time aforesaid for payment of any principal or money to be lent or covenanted to be performed upon or for any usury, whereupon or whereby there shall be reserved or taken above the rate of eight pounds in the hundred as aforesaid, shall be utterly void; and that all and every person and persons whatsoever, which shall after the time aforesaid upon any contract to be made after the said four-and-twentieth day of *June*, which shall be in the year of our Lord 1625, take accept and receive by way or means of any corrupt bargain loan exchange chevisance shift or interest of any wares merchandize or other thing or things whatsoever or by any deceitful way or means or by any covin engine or deceitful conveyance, for the forbearing or giving day of payment for one whole year of and for their money or other things above the sum of eight pounds for the forbearing of one hundred pounds for a year, and so after that rate for a lesser or greater sum or for a longer or shorter time, shall forfeit and lose for every such offence the treble value of the monies wares merchandizes and other things so lent bargained sold exchanged or shifted.

A Scrivener that takes above the Rate of 5*s.* for the forbearing of 100*l.* for a Year, or above 12*d.* for the renewing of a Bond, shall forfeit 20*l.* and have Imprisonment for Half a Year.

III. And be it further enacted by the authority aforesaid, That all and every scrivener and scriveners broker and brokers solicitor and solicitors driver and drivers of bargains for contracts, who shall after the said twenty-fourth day of *June*, which shall be in the year of our Lord 1625, take or receive directly or indirectly any sum or sums of money or other reward or thing for brokage soliciting driving or procuring the loan or forbearing of any sum or sums of money over or above the rate or value of five shillings for the loan or forbearing of one hundred pounds

No. III. 21 Jac. I. c. 17.

for a year, and so ratably or above twelve-pence for making or renewing of the bond or bill for the loan or forbearing thereof or for any counter bond or bill concerning the same, shall forfeit for every such offence twenty pounds and have imprisonment for half a year; the one moiety of all which forfeitures to be to the King our Sovereign Lord his heirs and successors, and the other moiety to him or them that will sue for the same in the same county where the several offences are committed and not elsewhere, by action of debt bill plaint or information in which no essoin wager of law or protection to be allowed.

The Continuance of this Act.

IV. This Act to continue for the space of seven years from the said four-and-twentieth day of *June*, which shall be in the year of our Lord 1625, and so to the end of the first session of Parliament then next following.

The Practice of Usury disallowed.

V. Provided, That no words in this law contained shall be construed or expounded to allow the practice of usury in point of religion or conscience. [Made perpetual by 3 Car. 1. c. 4. §. 5. 2 H. 3. c. 5. 3 H. 7. c. 6. 11 H. 7. c. 8. 37 H. 8. c. 9. 5 & 6 Ed. 6. c. 20. 13 El. c. 8.]

[No. IV.] 12 Charles II. c. 13.—An Act for the restraining the taking of excessive Usury.

12 Car. II. c. 13.

37 Hen. 8. c. 9. None shall take above Six Pounds for the Loan of an Hundred Pounds for a Year.

'FORASMUCH as the abatement of interest from ten in the hundred 'in former times hath been found by notable experience beneficial 'to the advancement of trade and improvement of lands by good husbandry, with many other considerable advantages to this nation, especially the reducing of it to a nearer proportion with foreign states with whom we traffic: And whereas in fresh memory the like fall from 'eight to six in the hundred, by a late constant practice hath found the 'like success to the general contentment of this nation, as is visible by 'several improvements: And whereas it is the endeavour of some at 'present to reduce it back again in practice to the allowance of the statute still in force to eight in the hundred, to the great discouragement 'of ingenuity and industry in the husbandry trade and commerce of this 'nation:'

The Penalty.

II. Be it, for the reasons aforesaid, enacted by the King's most excellent Majesty and the Lords and Commons in this present Parliament assembled, That no person or persons whatsoever from and after the twenty-ninth day of *September* in the year of our Lord one thousand six hundred and sixty, upon any contract, shall from and after the said twenty-ninth of *September* take directly or indirectly for loan of any monies wares merchandize or other commodities whatsoever above the value of six pounds for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum or for a longer or shorter time: And that all bonds contracts and assurances whatsoever, made after the time aforesaid for payment of any principal or money to be lent or covenanted to be performed upon or for any usury, whereupon or whereby there shall be reserved or taken above the rate of six pounds in the hundred as aforesaid, shall be utterly void: And that all and every person or persons whatsoever, which shall after the time aforesaid upon any contract to be made after the said twenty-ninth day of *September* take accept and receive by way or means of any corrupt bargain loan exchange chevisance shift or interest of any wares merchandize or other thing or things whatsoever, or by any deceitful way or means or by any covin engine or deceitful conveyance, for the forbearing or giving day of payment for one whole year of and for their money or other thing above the sum of six pounds for the forbearing of one hundred pounds for a year, and so after that rate for a greater or lesser sum or for a longer or shorter term, shall forfeit and lose for every such offence the treble value of the monies wares merchandize and other things so lent bargained sold exchanged or shifted.

The Forfeiture of a Scrivener that shall take above 5*s.* for the Forbearance of 100*l.* for a Year,

III. And be it further Enacted by the authority aforesaid, That all and every scrivener and scriveners broker and brokers solicitor and soli-

citors driver and drivers of bargains for contracts who shall after the said twenty-ninth day of *September* take or receive directly or indirectly any sum or sums of money or other reward or thing for brokage soliciting driving or procuring the loan or forbearing of any sum or sums of money over and above the rate or value of five shillings for the loan or forbearing of one hundred pounds for a year, and so rateably, or above twelvepence for the making or renewing of the bond or bill for loan or for forbearing thereof, or for any counterbond or bill concerning the same, shall forfeit for every such offence twenty pounds and have imprisonment for half a year; the one moiety of all which forfeitures to be to the King our Sovereign Lord his heirs and successors; and the other moiety to him or them that will sue for the same in the same county where the several offences are committed and not elsewhere, by action of debt bill plaint or information; in which no essoign wager of law or protection to be allowed. [Confirmed by 13 Car. II. Stat. 1, c. 14.]

No. IV.
12 Car. II. c. 13.

and above 12*d.* for making a Bond.

[No. V.] 12 Anne, st. 2. c. 16.—An Act to reduce the Rate of Interest, without any prejudice to Parliamentary Securities.*

12 Anne, c. 16.

'WHEREAS the reducing of interest to ten and from thence to eight and thence to six in the hundred hath from time to time by experience been found very beneficial to the advancement of trade and improvement of lands: And whereas the heavy burden of the late long and expensive war hath been chiefly borne by the owners of the land of this kingdom, by reason whereof they have been necessitated to contract very large debts, and thereby and by the abatement in the value of their lands are become greatly impoverished: And whereas by reason of the great interest and profit which hath been made of money at home the foreign trade of this nation hath of late years been much neglected, and at this time there is a great abatement in the value of the merchandizes wares and commodities of this kingdom, both at home and in foreign parts whither they are transported: And whereas for the redress of these mischiefs and the preventing the increase of the same, it is absolutely necessary to reduce the high rate of interest of six pounds in the hundred pounds for a year to a nearer proportion with the interest allowed for money in foreign states:' Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That no person or persons whatsoever from and after the nine-and-twentieth day of *September* in the year of our Lord one thousand seven hundred and fourteen, upon any contract which shall be made from and after the said nine-and-twentieth day of *September* take directly or indirectly for loan of any monies wares merchandize or other commodities whatsoever above the value of five pounds for the forbearance of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time; and that all bonds contracts and assurances whatsoever made after the time aforesaid for payment of any principal or money to be lent or covenanted to be performed upon or for any usury whereupon or whereby there shall be reserved or taken above the rate of five pounds in the hundred as aforesaid shall be utterly void; and that all and every person or persons whatsoever which shall after the time aforesaid upon any contract to be made after the said nine-and-twentieth day of *September* take accept and receive by way or means of any corrupt bargain loan exchange chevisance shift or interest of any wares merchandize or other thing or things whatsoever, or by any deceitful way or means or by any covin engine or deceitful conveyance for the forbearing or giving day of payment for one whole year of and for

No person shall take above 5*l.* per Cent. Interest.

All Bonds, &c. for a greater Interest shall be void.

And Persons taking above shall forfeit treble the value of the Monies, &c.

* This Act has the effect of extending the preceding statutes to Scotland.—Sartees v. Allan, 2 Dow. P. C. 254.

No. V. 12 Anne, c. 16.

their money or other thing above the sum of five pounds for the forbearing of one hundred pounds for a year, and so after that rate for a greater or lesser sum or for a longer or shorter term, shall forfeit and lose for every such offence the treble value of the monies wares merchandizes and other things so lent bargained exchanged or shifted.

No Scrivener, &c. shall take above 5*s.* for 100*l.* for a Year, for Brokage, &c. nor above 12*d.* besides Stamp Duties for making or renewing any Bond, &c.

II. And be it further enacted by the authority aforesaid, That all and every scrivener and scriveners broker and brokers solicitor and solicitors driver and drivers of bargains for contracts who shall after the said nine-and-twentieth day of *September* take or receive directly or indirectly any sum or sums of money or other reward or thing for brokage soliciting driving or procuring the loan or forbearing any sum or sums of money over and above the rate or value of five shillings for the loan or forbearing of one hundred pounds for a year, and so ratcably, or above twelvepence over and above the stamp duties for making or renewing of the bond or bill for loan or forbearing thereof, or for any counterbond or bill concerning the same shall forfeit for every such offence twenty pounds with costs of suit and suffer imprisonment for half a year; the one moiety of all which forfeitures to be to the Queen's most excellent Majesty her heirs and successors and the other moiety to him or them that will sue for the same in the same county where the several offences are committed and not elsewhere, by action of debt bill plaint or information, in which no essoign wager of law or protection shall be allowed.

[No. VI.] 14 George III. c. 79.—An Act for explaining an Act made in the Twelfth Year of the Reign of Queen Anne, intituled, *An Act to reduce the Rate of Interest, without any Prejudice to Parliamentary Securities.*

14 Geo. III. c. 79.

'WHEREAS large sums of money have been and may be lent by his Majesty's subjects in *Great Britain* upon mortgages or other securities on estates in the kingdom of *Ireland* and also in his Majesty's colonies or plantations in the *West Indies;* which loans have been found to contribute greatly to the improvement of the said kingdom colonies and plantations: And whereas it has frequently been found convenient to execute such mortgages or securities and the transfers or assignments thereof in *Great Britain:* And whereas doubts have arisen whether such loans and the mortgages or securities for the same and the transfers or assignments thereof when made and executed in *Great Britain* are as valid and effectual as when made and executed in the said kingdom of *Ireland* colonies plantations or dominions; and by reason of an Act passed in the twelfth year of the reign of her late

12 Anne.

Majesty Queen *Anne*, intituled *An Act to reduce the Rate of Interest, without any Prejudice to Parliamentary Securities*, whether such mortgages or securities are valid and effectual where the rate of interest thereby reserved or made payable is more than five pounds *per centum* though such interest does not exceed the rate of interest allowed and established by the law of the kingdom of *Ireland* colony plantation country or place in which the estates comprised in such mortgages or securities respectively are; and whether his Majesty's subjects in *Great Britain* have not or may not become subject or liable to penalties or forfeitures by receiving or taking interest for the sums of money really and *bonâ fide* advanced or lent on such mortgages or securities at the rate of interest allowed and established by the law of the kingdom colony plantation country or place wherein the mortgaged estates respectively lie:' For obviating such doubts, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That all mortgages and securities which by any of his Majesty's subjects already have been made and executed in *Great Britain* of or concerning any lands tenements hereditaments slaves cattle or other things lying and being in the

All Mortgages, &c. of Lands in Ireland or the Colonies, &c.

No. VI.
14 Geo. III.
c. 79.

kingdom of *Ireland* or in any of the said colonies plantations or dominions or any estate or interest therein to any of his Majesty's subjects for securing the repayment of the sums of money thereon respectively really and *bonâ fide* advanced and lent with interest for the same; and all bonds covenants and securities for payment of the same sums of money and interest respectively and all transfers or assignments which have been made and executed in *Great Britain* of such mortgages securities or bonds to any of his Majesty's subjects; shall be as good valid and effectual to all intents and purposes whatsoever as such mortgages securities bonds covenants transfers or assignments would have been if the same had been made and executed in the kingdom island plantation country or place where the lands tenements hereditaments slaves cattle or other things mentioned and comprised in any such mortgage security transfer or assignment as aforesaid severally lie or are; and that none of his Majesty's subjects in *Great Britain* shall be subject or liable to any of the penalties or forfeitures in the said Act made in the twelfth year of her said late Majesty's reign, by receiving or taking interest for the sum or sums of money really and *bonâ fide* advanced or lent on any such mortgage security bond covenant transfer or assignment as aforesaid at the rate of interest allowed and established by the law of the kingdom colony plantation country or place wherein the mortgaged premises respectively lie or are.

to be as effectual, as if executed in the Place, &c.

and no British Subject liable to Penalties.

II. And be it further enacted by the authority aforesaid, That all mortgages and securities which by any of his Majesty's subjects, after the passing of this Act, shall be made and executed in *Great Britain* of or concerning any lands tenements hereditaments slaves cattle or other things lying and being in the kingdom of *Ireland*, or in any of the said colonies plantations or dominions or any estate or interest therein, to any of his Majesty's subjects for securing the repayment of the sums of money thereon respectively to be really and *bonâ fide* advanced and lent, with interest for the same; and all bonds covenants and securities for payment of the same sums of money and interest respectively, and all transfers or assignments which, after the passing of this Act, shall be made and executed in *Great Britain* of such mortgages securities or bonds to any of his Majesty's subjects shall be as good valid and effectual to all intents and purposes whatsoever, as such mortgages securities bonds covenants transfers or assignments would be if the same were made and executed in the kingdom island plantation country or place where the lands tenements hereditaments slaves cattle or other things to be mentioned or comprised in any such mortgage security transfer or assignment as aforesaid severally lie or are; and that none of his Majesty's subjects in *Great Britain* shall be subject or liable to any of the penalties or forfeitures in the said Act made in the twelfth year of her said late Majesty's reign by receiving or taking interest for the sum or sums of money to be really and *bonâ fide* advanced or lent on any such mortgage security bond covenant transfer or assignment as aforesaid, so as the interest so to be received or taken do not exceed the rate of six pounds for one hundred pounds for a year; the aforesaid Act of Parliament or any other law or statute to the contrary notwithstanding.

Transfers of such Mortgages, &c. valid.

III. Provided always, and it is hereby declared, That this Act shall not make good valid or effectual any such mortgage security bond covenant transfer or assignment where the lender or lenders of any sum or sums of money has or have knowingly advanced or lent or shall knowingly advance or lend thereon more money than the lands tenements hereditaments slaves cattle or other things in such mortgages securities transfers or assignments mentioned or comprised, or to be mentioned or comprised, was were or shall be at the time or times of advancing or lending such sum or sums of money as aforesaid really and *bonâ fide* worth, to be sold.

Not to make good such Mortgage, if advanced more than Lands worth.

IV. And be it enacted by the authority aforesaid, That all and every person or persons borrowing any sum or sums of money under the authority of this Act upon any such lands tenements hereditaments slaves cattle or other things as aforesaid, exceeding the value which the same shall be, at the time of borrowing such sum or sums of money really and *bonâ fide*

Borrowing Sums exceeding the Value, &c. to forfeit triple the Value.

No. VI. 14 Geo. III. c. 79.

worth to be sold over and above all incumbrances which shall then affect the same, shall forfeit triple the value of the sum borrowed; the one half to be paid to the informer the other half to the treasurer of the Royal Hospital for seamen at *Greenwich*, in the county of *Kent*, or to his sufficient deputy or agent, for the use of the said hospital.

Mortgages to be registered in the Colony, &c.

V. Provided also, and be it enacted, That all such mortgages or other securities granted under the authority of this Act, by which such lands tenements hereditaments slaves cattle or other things are intended to be charged or affected shall be registered within the kingdom island colony plantation country or place where the said lands tenements hereditaments slaves cattle or other things severally lie or are within the time limited by the laws of such kingdom island colony plantation country or place, otherwise the same shall be subject to the several provisions and penalties contained in the said Act, made in the twelfth year of her late Majesty Queen ANNE, in such manner as the same would have been if this Act had never been passed, unless the mortgagee or other person or persons for whose behoof such mortgage or other security shall have been made or granted shall have *bona fide* used his or their utmost endeavour to cause the same to be registered within the time hereinbefore limited for that purpose.

[No. VII.] 1 & 2 Geo. IV. c. 51.—An Act to explain an Act made in the Fourteenth Year of his late Majesty King *George* the Third, for explaining an Act made in the Twelfth Year of Queen *Anne*, intituled, *An Act to reduce the Rate of Interest, without any Prejudice to Parliamentary Securities.*—[15*th June* 1821.]

14 Geo. III. c. 79.

WHEREAS by an Act made in the fourteenth year of the reign of his late Majesty king *George* the Third, intituled *An Act for explaining an Act made in the Twelfth Year of Queen* Anne, *intituled* '*An Act to reduce the Rate of Interest, without any Prejudice to Parliamentary Securities*,' it was amongst other things enacted, that all mortgages and securities which by any of his Majesty's subjects already had been or which after the passing of the said Act should be made and executed in *Great Britain* of or concerning any lands tenements hereditaments slaves cattle or other things lying and being in the kingdom of *Ireland*, or in any of his Majesty's colonies plantations or dominions in the *West Indies*, or any estate or interest therein, to any of his Majesty's subjects for securing the repayment of the sums of money thereon respectively and *bona fide* advanced and lent with interest for the same, and all bonds covenants and securities for payment of the same sums of money and interest respectively, and all transfers or assignments which had been or which after the passing of the said Act should be made and executed in *Great Britain* of such mortgages securities or bonds to any of his Majesty's subjects, should be as good valid and effectual to all intents and purposes whatsoever as such mortgages securities bonds covenants transfers or assignments would have been if the same had been made and executed in the kingdom island plantation country or place where the lands tenements hereditaments slaves cattle or other things mentioned and comprized in any such mortgage security transfer or assignment as aforesaid severally lie or are; and that none of his Majesty's subjects in *Great Britain* should be subject or liable to any of the penalties or forfeitures in the Act made in the twelfth year of the reign of her late Majesty Queen *Anne*, by receiving or taking interest for the sum or sums of money really and *bona fide* advanced or lent on any such mortgage security bond covenant transfer or assignment as aforesaid at the rate of interest allowed and established by the law of the kingdom colony plantation country or place wherein the mortgaged premises respectively lie or are, so as the interest to be received or taken on any such mortgages bonds covenants or securities as should be made and executed after the passing of the said Act, should not exceed the rate

of six pounds for one hundred pounds for a year: And whereas doubts have been entertained whether the provisions and declarations of the said recited Act extend to the bonds and covenants of third parties given as a collateral security for the payment in *Great Britain* of the interest for the sums of money advanced or lent as therein mentioned; for obviating such doubts be it declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That all mortgages and securities which by any of his Majesty's subjects already have been, or after the passing of this Act shall be made and executed in *Great Britain*, of or concerning any lands tenements hereditaments slaves cattle or other things, lying and being in *Ireland* or in any of the said colonies plantations or dominions respectively or any estate or interest therein to any of his Majesty's subjects for securing the re-payment of the sums of money thereon respectively really and *bona fide* advanced and lent, with interest for the same, whether payable in *Great Britain* or in the country island plantation or place where the lands tenements hereditaments slaves cattle or other things mentioned and comprized in any such mortgage security transfer or assignment as aforesaid severally lie or are; and all bonds and covenants which have been or which, after the passing of this Act, shall be made and executed in *Great Britain*, either by the person borrowing such sums of money or by any other person or persons either residing in *Great Britain* or elsewhere by way of collateral security for the payment of such interest and all transfers and assignments which have been or which, after the passing of this Act, shall be made and executed in *Great Britain* of such mortgages securities or bonds to any of his Majesty's subjects, shall be as good valid and effectual to all intents and purposes whatsoever as such mortgages securities bonds covenants transfers or assignments would have been if the same had been made and executed, and the interest thereon had been made payable, and the person or persons entering into such bonds or covenants by way of collateral security had resided in the country island plantation or place where the lands tenements hereditaments slaves cattle or other things mentioned and comprized in any such mortgage security transfer or assignment as aforesaid severally lie or are; and that none of his Majesty's subjects of *Great Britain* shall be subject or liable to any of the penalties or forfeitures in the said Act made in the twelfth year of the reign of her late Majesty Queen *Anne*, by receiving or taking or having received or taken interest for the sum or sums of money really and *bona fide* advanced or lent or to be advanced or lent on any such mortgage security bond covenant transfer or assignment as aforesaid, so as the interest so to be received or taken do not exceed the rate of six pounds for one hundred pounds for a year; the aforesaid Act made in the twelfth year of the reign of her late Majesty Queen *Anne*, or any other law or statute to the contrary notwithstanding:

Securities made in Great Britain to be as valid as if made in the Country where the property affected is situate.

PART III.

CLASS VI.

Annuities.

[No. I.] 17 George III. c. 26.—An Act for registering the Grants of Life Annuities; and for the better Protection of Infants against such Grants.*

'WHEREAS the pernicious practice of raising money by the sale of Life Annuities hath of late years greatly increased, and is much promoted by the secrecy with which such transactions are conducted;' Be it therefore enacted by the King's most excellent Majesty by and

17 Geo. III. c. 26.

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* This Act has produced a greater number of judicial decisions than any other which has passed since the Statute of Frauds; and in proportion to the limited nature of the subject has been perhaps more the object of judicial examination than any other in the Statute Book. The ostensible object of passing such an Act was the restraining impositions upon persons whose imprudence was supposed to render them an easy prey to others more designing; but the whole series of decisions which it has given rise to are distinguished by one leading characteristic feature, the attempt to invalidate deliberate contracts in consequence of some unskilfulness or inadvertence in endeavouring to comply with the formalities which it prescribes, and which formalities are stated in so vague and indistinct a manner, that it was impossible for any precaution to have adhered to them according to the judicial exposition which they have received: so that it might almost be supposed that the object of the framers had been to suppress and extinguish the contract entirely, not by direct prohibition, but by involving it in difficulties, which no skill or prudence could overcome. The prejudice against this species of contract might be abated by reflecting that few persons would be willing to advance their money by way of loan, depending for the repayment upon the duration of a mere temporary interest, that it is always at the option of a person entitled to property of such description to dispose of the property itself, if it is more beneficial to himself, than merely to subject it to a particular charge, that the competitors for obtaining property by annuity would have reduced the general rate of purchase if the advantages arising from such property were (all circumstances considered) of such an excessive nature as courts of justice have sometimes supposed, and that the general inadequacy of the price, in proportion to the supposed actual value, has, in a great measure, arisen from the precariousness of the security in consequence of the difficulties in which it is entangled by the operation of the law. When some writers have reprobated this contract upon the ground that persons have refused to advance money upon undisputed security of fee-simple property, but have purchased an annuity out of the same property, clearing above five per cent. after payment of insurance, they have done no more than shew that interest at five per cent. although the legal measure was not the actual value of the use of money to the party advancing it, not reflecting that a man has no more claim to the money of another than to his house or habitation, which may be sold or let upon such terms as may accord with the mutual convenience of the parties. The reputed proposer of the measure having long filled high and important situations, it

No. I. 17 Geo. III. c. 26.

Memorial of all Deeds, &c. for granting Life Annuities shall be Inrolled in Chancery, &c.

with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That a memorial of every deed bond instrument or other assurance whereby any annuity or rent charge shall from and after the passing of this Act be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, shall within twenty days of the execution of such deed bond instrument or other assurance be inrolled in the High Court of Chancery;

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became a kind of fashion to regard the measure itself as a signal instance of legislative wisdom, but in many modern determinations the true character of it has been more accurately recognized. Nothing can be more correct than the following observation of Lord Eldon—"The misfortune is that to those who *mean improperly*, the Act holds out a language they cannot be expected to understand, the courts not understanding it, and it embarrasses those meaning to engage in a righteous transaction by throwing round it doubts from which no advice can disentangle them."—Duff *v.* Atkinson, 8 Vesey, 577; and the legislature has at length interposed by Statute 53 Geo. III. c. 141. (No. 2 of this class) to diminish at least with respect to future contracts the difficulty of a fair and just compliance with the intention of the law. As the last Act has however only a prospective operation, and as many of the provisions of the preceding one are repeated, it is proposed to include in the present note a general summary of the decisions which have taken place upon its construction under the following heads:

I. The Annuities to which the Act does or does not extend.
II. The Memorial and Inrolment.
III. The Deeds by which the Annuity is granted, and herein of the Sufficiency of the consideration.
IV. The Exceptions with respect to Annuities secured by Lands in Fee or Tail, or by Transfer of Stock.
V. The Invalidity arising from a Non-compliance with the Act.
VI. The Proceedings for carrying the Act into effect.
VII. The Consequences of invalidating the Annuity.
VIII. Of Assignments of Annuities.

I. In Latless *v.* Holmes, 4 T. R. 660, it was held, that the Act applied to all Annuities granted after the commencement of the sessions, by the effect of the general rule, that all the Acts of the sessions should relate to the first day; this determination was apparently the occasion of the Act 33 Geo. III. c. 13. by which the day of the Royal Assent is required to be indorsed on all Acts of Parliament, from which day alone their operation is to take place.

An assignment of a life interest in stock in trust to pay to A. B. an annual sum, and the surplus to the grantor, with a covenant to make up any deficiency of the annual payment, and to pay a proportionate share in case of the death of the assignor, between the days of payment of the dividends, is an Annuity within the Act, but a *bona fide* sale of dividends is not—Browne *v.* Like, 14 Ves. 302. The Act only extends to Annuities granted in consideration of something paid; and therefore it was decided in Crespigney *v.* Wittenoom, 4 T. R. 790. that it did not so extend to an annuity agreed to be paid by one partner to another upon retiring from business, it being the opinion of the Court that it was apparent from the preamble and the different clauses that the legislature did not intend that there should be any memorial of such an annuity. Lord Kenyon said, it seemed to him that the anxiety of some members of the House induced them to insert the last clause after the Act was first drawn; but he thought that the first section could never have been extended to the cases mentioned in the last, if they had not been excepted. The same point was also ruled in Horn *v.* Horn, 7 East. 529. So the Act does not extend to an annuity in consideration of giving up a business and assigning book debts, stock in trade, or household furniture —Hutton *v.* Lewis, 5 T. R. 639—Doe dem. Johnstone *v.* Philips, 1 Taunton, 356.

The deeds and other assurances, a memorial of which is required by 17 Geo. 3. c. 26. to be enrolled, are those to which the grantor of an annuity is a party, or which are entered into by a third person at his instance and request, or on his behalf, and consequently where a third person wholly unconnected with the grantor, guaranteed in consideration of a certain commission the payment of an annuity to the grantee: Held that such guarantee need not be enrolled.—Sandilands *v.* Marsh, and B. & A. 673.

II. Semble, that nothing more is necessary to make good the memorial of an annuity, than a compliance with the requisites which are prescribed in terms by the stat. 17 G. 3. c. 26. s. 1. Horwood *v.* Underhill, 4 Taunt. 346.—And see Jackson *v.* Milsentown, 1 Marsh 533.—S. C. 6 Taunt. 189. post page 58.

The twenty days within which the memorial must be registered are exclusive of the day of execution—*ex parte* Fallon, 5 T. R. 283.

The memorial must express every deed, bond, instrument or other assurance for the annuity.

This includes deeds for securing annuities as well as deeds granting them.—Hood *v.* Burlton, Vesey, jun. 29—Rosher *v.* Hurdis, 5 T. R. 678. A will which the grantor was required to make and deposit with the grantee, and to make affidavit that she would not revoke it, *ex parte* Mackenzie, 4 Taunt. 323.

and that every such memorial shall contain the day of the month and the year when the deed bond instrument or other assurance bears date and the name of all the parties, and for whom any of them are trustees and of all the witnesses; and shall set forth the annual sum or sums to be paid and the name of the person or persons for whose life or lives the annuity is granted and the consideration or considerations of grant-

The omission of stating a bond to pay a sum of money, if the grantor goes abroad in a military capacity, vacates the annuity—Chawner *v.* Whaley, 3 East. 500.

If some securities are only noticed in the recital of the annuity deed, it is not sufficient—Van Braam *v.* Isaacs, 1 B. & P. 451.

It is not necessary, where an annuity is granted under a trust deed to raise money by annuities, to enrol the trust deed—O'Callaghan *v.* Ingilby, 9 East, 135.

Nor where an annuity bond is assigned to secure a smaller annuity to enrol the first bond—Henderson *v.* Countess of Glencairn, 2 Taunt. 235

In *ex parte* Chester, 4 T. R. 694. the Court of B. R. expressed an opinion, that only the particular deed, not truly set forth in the memorial, was void; but in the Duke of Bolton *v.* Williams, 2 Vesey, jun. 138, 4 Bro. Ch. 310. Lord Loughborough held, that all the different parts made but one assurance, that the object was, that all the component parts should be set forth, and that a memorial that does not contain every assurance is not valid. He intimated, that upon inquiry the opinion of the Court of King's Bench was expressed with reference only to the mode of application for setting aside the securities.

In Hart *v.* Lovelace, 6 T. R. 471, Lord Kenyon said, "I am not prepared to say whether or not all the instruments given to secure an annuity must be set aside because one only is not properly registered. The cases upon the subject are not reconcileable, but in the latest of them, Lord Loughborough, who drew the Annuity Act, decided, that if any of the deeds constituting the assurance for the annuity were not properly inrolled all the instruments were void. We are not called upon now to determine that point, but the strong inclination of my opinion is, that any defect in the memorial of one of the deeds will vitiate the whole assurance."

The decisions in subsequent cases seem to take this opinion for granted, and the reasons stated for it by Lord Loughborough are very strong; but I cannot forbear observing, that in many of the cases upon the subject the name of Lord Loughborough is adduced as giving more weight to particular opinions than is consistent with the legitimate principles of judicial reasoning.

The construction of an Act of Parliament, as of any other instrument, is to be deduced from the language of the instrument itself, and not from any particular communications, as to the objects or opinions of the individuals reported to have framed it, and which may not have accorded with the views of those who concurred in giving it validity by their assent, and nothing could be a greater extravagance than, in the administration of justice, to form one opinion upon the mere perusal of the instrument itself, and to act upon another from extrinsic considerations, and if these extrinsic circumstances cannot be fairly used in opposition to a given opinion, can they form any proper or legitimate ingredient in the support of it?

The memorial must set out a warrant of attorney to confess judgment.—Davidson *v.* Lord Foley, 2 H. B. 12.—Hopkins *v.* Waller, 4 T. R. 463.

It need not set out the judgment signed thereon.—Sherson *v.* Oxlade, 4 T. R. 824.

Secus as to a judgment which is the only security.—*Ibid.* As to the necessity of stating a fine, or the effect of stating it inaccurately, *quære*.—Bradford *v.* Burland, 14 East, 445. A memorial of a joint and several bond, as several is insufficient.—Willey *v.* Cawthorne, 1 East. 398.

But the memorial of a bond by A. and B. may be explained by a subsequent part, setting forth a recital of it as joint and several.—Coare *v.* Giblett, 3 East, 461.

It was held that the memorial must express, that the obligor in a bond binds *his heirs*, if such be the fact.—Horwood *v.* Underhill, 10 East, 123; so Purling *v.* Parkhurst, 2 Taunt. 237; and the omission is not cured by stating the condition, that if the grantor, his heirs, &c. shall pay, &c. *ibid.*; and see Denne *v.* Dupuis, 11 East. 34. But the decision of Horwood *v.* Underhill has been since reversed in the Exchequer Chamber, 4 Taunt. 346.

A declaration in a deed, that no execution shall issue on a warrant of attorney, is not sufficiently described by stating a declaration that it was for better securing the annuity as therein mentioned. —Cunningham *v.* Mackenzie, 2 B. & P. 598, and see Orton *v.* Knight, 3 B. & P. 153.

It is sufficient to state an assignment of a salary "of so much per annum," without stating how it arises.—Watts *v.* Millard, 5 T. R. 598

It is not necessary to mention the particular estates of all the grantors, if the estates in a county are charged, and so stated.—O'Callaghan *v.* Ingilby, 9 East, 135.

Whether the estates charged are necessary to be mentioned at all, *quære*, *ibid.*

Nor to state power of distress or entry, except so far as they create a trust; nor covenants of the grantors for payment, *ibid.*; and see Defaria *v.* Sturt, 2 Taunt. 225, unless they modify the grant itself.—Mouys *v.* Leake, 8 T. R. 411.

Secus as to covenant by trustees not to revoke a power of attorney to receive dividends.—Duff *v.* Atkinson, 8 Vesey, 577.

Nor that a purchaser of the annuity was to be paid from the last quarter day to the death.—Ince *v.* Everard, 6 T. R. 545.

Note—Those cases only respecting the contents of deeds are stated under this

No. I. 17 Geo. III. c. 26.

ing the same; otherwise every such deed bond instrument or other assurance shall be null and void to all intents and purposes.

II. And be it further enacted, That before any judgment shall be entered of record upon any warrant of attorney for recovering or securing the payment of any annuity or rent-charge that hath already been granted for one or more life or lives or for any term of years or greater estate determinable upon one or more life or lives and before any execution shall be sued out, or action brought on any such judgment already

Before Judgment be entered upon any Warrant of Attorney, a Memorial shall be inrolled.

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head, which are not referrable to particular subjects mentioned in the Act, and which are mentioned separately.

2. The date.

Duke of Bolton *v.* Williams, 2 Ves. jun. 138, 154.

3. The parties.

4. For whom any of them are trustees.

It is not sufficient to state, that the assurance was made upon the *trusts therein mentioned*, without specifying the trusts.—Toldervy *v.* Allan, 5 T. R. 480.—Denn dem. Dolman *v.* Dolman, 5 T. R. 641.

Secus if there were no other trusts than those specified.—Toldervy *v.* Allan.

The trusts with respect to a lien on the estate, such as payment of taxes, need not to be stated.—*Ibid.*

A memorial of a demise of a term in trust for better securing the annuity, with such powers and in such manners as are particularly mentioned, ruled sufficient upon the face of it; it being evident, that the party was a trustee for the Annuitant, and it not appearing that there was a trustee for any other person.—Defaria *v.* Sturt, 2 Taunt. 225. Mansfield, C. J. said "Now leaving all the cases and arguments ABOUT THIS UNFORTUNATE ACT out of the case, let any one having read this deed be asked for whom there is a trustee."

A trust to permit the owner of the premises to receive the rents until default, and in case of default for sixty days, to raise the arrears, &c. by sale or mortgage, is not sufficiently described by stating the party to be a trustee nominated on the part of the grantee.—Askew *v.* Makreth, Dom. Proc. N. R. 214. Nor by describing the deed as containing the usual powers of entry and distress.—Des Enfans *v.* O'Bryen, 3 East, 559; and see Bradford *v.* Burland, 14 East, 445—Taylor *v.* Johnson, 8 T. R. 184.

The memorial must state a trust to pay the extra expense of insuring, in case of the grantor leaving the kingdom.—Cummins *v.* Isaac, 8 T. R. 183; see Chawner *v.* Whaley, *supra*, (1.)

A contingent interest (*e.g.* a trust to pay the annuity to the husband after the death of the wife.)—Hood *v.* Burlton, 2 Vesey, jun. 29.

The memorial of an annuity required by the Statute 17 Geo. 3. c. 26. in reciting the indenture, states, "that for the better and more effectually securing the payment of the said annuity, and in consideration of 10*s.* the grantor did grant the said estates upon the trusts, and to and for the uses, intents, and purposes therein expressed:" held that this was sufficient statement of the trusts of the demise.—Brown *v.* Rose, 1 Marsh, 478. S. C. 6. Taunt. 124.

5. All the witnesses.

It is not sufficient to state, that all the instruments were attested by A. B. C. and D. or one of them.—Hart *v.* Lovelace, 6 T. R. 471.

A memorial, stating the deeds to be attested by A. B. C. and D. is insufficient if all of them are not attested by all those witnesses.—*Ex parte* Mackreth, 2 East. 563.

But if a deed between A. B. and C. is stated to be executed by A. and C. in the presence of E. and F. it is no objection, that it was also executed by B. in the presence of those witnesses; for it is not necessary to specify what signatures the witnesses respectively attested.—Orton *v.* Knight, 3 B. & P. 153.

The omission of the Christian name of one of the witnesses, as attesting one of the instruments, does not defeat the annuity, the name being truly stated as to the attestation of the other instruments.—Watts *v.* Millard, 5 T. R. 598. It is sufficient to state, that the securities were executed in the presence of A. B. without adding that he attested them.—Wallis *v.* Lade, 4 Taunt. 761

6. The life or lives for which the annuity is granted.

7. The consideration or considerations of granting the same.

Bank notes may be described as money.—Wright *v.* Reed, 3 T. R. 554—Cousins *v.* Thompson. 6 T. R. 335.

Promissory notes, or country bank notes, must be specifically stated.—Rumball *v.* Murray, 3 T. R. 298—Morris *v.* Wall, 1 B. & P 208.

So a banker's check and the time of its becoming due.—Berry *v.* Bentley, 6 T. R. 690.—Poole *v.* Cabares, 8 T. R. 328.

If received in money by the grantor before the execution of the deeds, it may be stated as money. Er *parte* Michell, 2 East, 137.

The sum paid for a former annuity, not registered, but renewed from time to time, with a further sum given for a further annuity, may be stated as an entire sum.—Symmons *v.* Mortimer, 5 T. R. 139.

The whole money may be stated as paid, although the fair expenses of the writings are immediately paid out of it.—Mouys *v.* Leake, 8 T. R. 411—Philips *v.* Crawford, 9 Ves. 214. 13 Ves. 475. In the Duke of Bolton *v.* Williams, 2 Ves. 153, the omission of such payments was held to vitiate the annuity, but there were many

entered on any deed bond instrument or other assurance already executed for the purposes aforesaid a like memorial of the deed bond instrument or other assurance shall be inrolled in the High Court of Chancery, and in case the party shall neglect to inrol the same, any such judgment execution or proceeding in the action respectively shall be null and void.

No I
17 Geo. III
c 26.

other grounds on which the annuity in that case was set aside

Secus as to a charge for commission by the grantee himself, being a Solicitor.—Broomhead *v.* Eyre, 5 T. R 597.

When part of the consideration is the giving up a former annuity, it cannot be stated as money. Wasburn *v.* Birch, 5 T. R 472.

Neither can money previously lent upon promissory notes which were given up.—Kirkman *v* Price, 1 H. B. 309.

Nor money retained by the grantee with the consent of the grantor, for a debt due to the former by the attorney of both parties, and accounted for by a receipt from the grantor to the grantee, and a promissory note from the attorney to the grantor.—Watts *v.* Millard, 5 T R 596.

Ruled that a memorial of payment to A. B. and C some or one of them, is void.—Vaux *v* Ansell, 1 B. & P 224

The necessity of stating to whom the payment was made is in this case taken for granted.

The deed must express *by whom* the consideration was paid, but not the memorial, per Lyre, Ch. J. *ex parte* Ansell, 1 B & P 63. The contrary is laid down by Lord Loughborough, in Williams and the Duke of Bolton, 2 Vesey, jun. 152 See Crauford *v.* Philips, post 111

It is sufficient if the consideration is stated by way of recital —Sowerby *v* Harris, 4 T. R 494. —Hodges *v* Money, 4 T R 500.

The consideration need only be stated once in the memorial, although mentioned in all the deeds —Hodges *v* Money, 4 T R 500

It is not necessary to state the nominal consideration of ten shillings.—Ince *v* Everard, 6 T R 545

It is in respect of its forming a part of the consideration that an agreement for the redemption of the annuity must be stated —Steadman *v.* Purchase, 6 T R 737.

Rule for setting aside annuity, on account of an agreement for redemption indorsed, discharged —it not appearing to have been made prior to the execution of the deed —Schuman *v.* Weatherhead, 1 East. 547 *

Where upon redemption of an annuity it was agreed, that if the grantor should afterwards wish to borrow money upon the same terms, the same deeds should be given as a security, and upon an advance of money, the deeds were given accordingly, without fresh inrolment the court directed them to be cancelled.— Hammond *v.* Foster, 5 T R 635.

If a correct memorial be incorrectly inrolled, and the officers afterwards rectify the same before any proceeding had, the court finding the inrolment right will not inquire further —Garrick *v.* Williams, 3 Taunt 540

III The third Section requires the Deeds to set forth the Consideration, and by whom paid, that the Consideration shall be in Money only

For the manner of stating the consideration see the preceding cases respecting the memorial.

If the consideration is paid by an agent of the grantee, it must be so stated—Dalmer *v* Barnard, 7 T R 218

So by a banker's clerk—Askew *v* Macreth, 1 N R. 214 Dom Proc.

It is sufficient if the fact appears by the receipt indorsed on the deed—Philips *v.* Crauford, 9 Ves. 214 13 Ves. 517

It is not necessary to state the name of the agent who receives the money—Crauford *v* Philips, 2 N R 141.

Nor the time when the payment was made—Coare *v.* Giblett, 4 East. 85—Philips *v.* Crauford, 9 Ves 214 13 Ves 475.

But in these cases the day of payment to the grantor's agent was in fact stated.

" If indeed any matter had been agreed upon by which payment of the consideration was to be delayed to the disadvantage of the grantor, I should not have thought the consideration fully and truly stated"—per Chambre, J in Crauford *v.* Philips

If there be a bond and warrant of attorney it is sufficient to state the consideration in the bond —Hodges *v* Money, 4 T. R

As to the SUFFICIENCY *of* CONSIDERATION — Notwithstanding the enactment that the consideration shall be as money only, it is not necessary that it shall be paid in monies numbered

Money paid for the redemption of a former annuity is a sufficient consideration---*ex parte* Fallon and Wife, 5 T R. 283.

So an antecedent debt---Kelf *v.* Ambrose, 7 T. R. 551 †.

* See Saunders *v.* Hardinge, 5 T R 9 in which a memorial stated a deed poll assigning an annuity of 21*l.* and containing a further grant of an annuity of 7*l* the consideration of which was duly stated; and also a bond for the payment of an annuity of 31*l* and a warrant of attorney to secure it, and judgment on the warrant of attorney was set aside for not stating the consideration of the bond --it not sufficiently appearing to be for securing the same annuity as the deed poll.

† Per Lord Kenyon, The great mischief intended to be provided against by the legislature in this Act, was the fraud and circumvention of those who took advantage of the necessities of distressed persons, desirous of taking up money upon annuities, by putting off goods upon the latter, at their own price, instead of money, which goods they were afterwards to dispose of at a consider-

No. I. 17 Geo. III. c. 26.

All future Deeds shall contain the Consideration and Names at length.

III. And be it further enacted by the authority aforesaid, That in every deed instrument or other assurance, whereby any annuity or rent-charge shall from and after the passing of this Act be granted or attempted to be granted, the consideration really and *bona fide* (which shall be in money only), and also the name or names of the person or persons by whom and on whose behalf the said consideration or any part thereof shall be advanced shall be fully and truly set forth and described in words at length;

As to the manner of stating such consideration, *vi. ibid.*

IV. *The Exception as to Annuities secured on Lands of equal or greater annual Value in Fee or Tail in Possession, or by Transfer of Stock.*

This exception extends to grants made by persons having a joint power of appointment over the fee, executing such a power by granting an annuity in execution of such power.—Halsey *v.* Hales, 7 T. R. 194.

To an annuity secured on lands in fee of equal value, and also on leasehold premises—*ex parte* Mitchell, 2 East, 137.

To an annuity secured on an equity of redemption, the annual value being more than the interest—Amhurst *v.* Skynner, 12 East, 263—Tucker *v.* Thurstan, 17 Vesey, 131.

Upon a summary application, the Court will not try the value of the land upon affidavit, but direct an issue—Saunders *v.* Wright, 1 Taunt. 369.

The exemption as to stock relates only to stock actually transferred, and not an authority by a person entitled to dividends for life, for trustees to apply them in payment of an annuity—Hudson *v.* Skinner, 6 T. R. 596—Duff *v.* Atkinson, 8 Vesey, 577.

V. Of the Invalidity arising from a Non-compliance with the Act.

In Crossley *v.* Arkwright, 2 T. R. 603. it was ruled, that an annuity affected by the Act was absolutely void; and that upon an execution against a person to whom goods had been assigned in consideration of such an annuity, the Sheriff might return *nulla bona*.

One point of the decision was, that the grantor of the annuity having subsequently to the plaintiff's execution taken the same goods in execution, had neglected to vacate the annuity, supposing it only voidable by the parties.

> The invalidity of the particular annuity was taken for granted; but there may be considerable room for doubting upon subsequent determinations, whether it was really a case within the Act.

An execution for an annuity void under the Act set aside upon the application of a creditor, having a subsequent execution—Saunders *v.* Hardinge, 5 T. R. 9.

An annuity void under the Act is not a forfeiture of a life interest, granted upon condition not to charge or incumber it.—Denn. dem. Dolman *v.* Dolman, 5 T. R. 641.

VI. Proceedings to set aside Annuities.

1. At Law.

The power, in Section 4, of applying to the Court for the deeds to be cancelled, is confined to the grantor, and does not extend to an assignee of the premises subject to the annuity, although the deed may be void—Garrood *v.* Sanders, 6 T. R. 403.

The power is confined to cases where an action is brought. It does not apply to defects by reason whereof the annuity is void under the first section—Symonds and Ux *v.* Cobourne, 1 B. & P. 482.

Whether the Court will for such defect stay proceedings or put the defendant to plead the circumstance—Qu. *ibid.*

The Courts under their general jurisdiction will take cognizance of a warrant of attorney to confess judgment for an annuity void under the Act, and direct it to be cancelled *ex parte* Chester, 1 T. R. 694. and see note 1 B. & P. 66; but will not set aside the other deeds, *ex parte* Chester, *ibid.*

But the levying a fine does not give jurisdiction to the Court of Common Pleas—Crauford *v.* Caines, 2 H. B. 438.

The clause only relates to such judgments on warrants of attorney as were intended to be part of the security, and does not extend to cases where judgment is obtained in the ordinary course of law on any instrument given for securing the same—Buck *v.* Tyte, 7 T. R. 495.

Therefore after verdict and judgment on *non est factum* the application for summary relief is too late—*ibid.*

After judgment upon warrant of attorney, elegit and verdict in ejectment on application is too late, the defendant should have made his stand upon the ejectment.—Witley *v.* Woolley, 7 T. R. 540.

A rule for setting aside the annuity having been discharged on the merits a new application will not be entertained upon the same statement of facts, although upon a different objection—Greathead *v.* Bromley, 7 T. R. 455.

Nor upon another fact not proved on the former application—Schumann *v.* Weatherhead, 1 East, 537.

Annuity not set aside for a clerical error in the term assigned—Ince *v.* Everard, 6 T. R. 545. So where the true consideration was stated to be

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able loss. For this reason the legislature required, that the consideration should be in money and not in goods. But it is not necessary, nor was it ever intended that the money should be actually told down at the time of the grant. If it be a bona fide transaction, and the money be really paid to the grantor, or to his use, it satisfies the words and meaning of the Act.

and in case the same shall not be fully and truly set forth and described, every such deed instrument or other assurance shall be null and void to all intents and purposes.

IV. And be it further enacted, That if any part of the consideration shall be returned to the person advancing the same (1.); or, in case the consideration or any part of it is paid in notes, if any of the notes with the privity and consent of the person advancing the same shall not be paid when due, or shall be cancelled or destroyed without being first paid; or if

If Part of Consideration be returned or any Notes shall not be paid when due, &c.

280*l.* and afterwards by mistake *which sum* of 250*l.* was paid, &c.—*ibid.*

The Court will not after the death of the grantee set aside an annuity upon a statement of facts which he might have contradicted if living—Haynes *v.* Hare, 1 H. B. 659; and see *ex parte* Maxwell, 2 East. 85. So after the death or imbecility of the agent who negociated the transaction, and could alone speak to the facts, the annuity being paid during his life—Poole *v.* Cabanes, 8 T. R. 328.

Secus where the defects appeared on the face of the instruments, as where only some of the deeds were attested by the witnesses mentioned in the memorial—*Ex parte* Mac Reth, 2 East. 563.

So upon a warrant of attorney when all the deeds are not stated in the memorial—Van Braam *v.* Isaacs, 1 B. & P. 451.

And there is no limitation of time for the application, and the Court have no discretion—Van Braam *v.* Isaacs, *ex parte* Mac Reth.

The objections to the annuity must be stated in the rule *nisi.*—*Reg. Gen.* B. R. T. 42 G. 3. 2 East, 569.

Where upon the execution of an annuity bond by three out of several obligors, the grantee of the annuity paid the consideration-money to D. S. one of the three, who immediately paid it into a banker's in the names of himself and T. L. the attorney who acted for all parties, and took the banker's receipt for the money in the names of himself and T. L. which was done in consequence of the other obligors not attending to execute the bond, it being agreed by the parties then present that until the securities should be executed the money should remain in the hands of a banker, and afterwards, upon the execution of the securities, the money was paid at the banker's with the authority of T. L. to D. S., and upon debt brought by the executors of the grantee on the annuity bond, the condition of which, on oyer, stated that the grantee paid the money to the obligors, and the memorial stated that the money was paid to D. S. to the use of himself and the other obligors by the grantee: Held, that a plea alleging that in the assurances the consideration-money was stated to be paid by the grantee, and that it was not stated in the assurances that the sum was advanced by any agent or agents of the grantee, and that the same was advanced on behalf of the grantee by T. L. and D. S. was to be taken as pleaded with reference to the Annuity-act, 17 Geo. 3. c. 26.; and that it raised an objection which was sustained by the facts, and invalidated the bond—Horwood *v.* Underhill, 3 M. & S. 82.

2. In Equity.

A Court of Equity will entertain jurisdiction to set aside an annuity for legal objections founded on the Act—Byne *v.* Vivian, 5 Vesey, 604—Byne *v.* Potter, 5 Vesey, 609. before the Lord Chancellor—Bromley *v.* Holland, 5 Vesey, 610—7 Vesey, 3—Coop. 9. In this last case the principle of jurisdiction was much doubted, and the decision referred to the authority of preceding cases—Underhill *v.* Horwood, 10 Vesey, 209—Ware *v.* Horwood, S. C. by Revivor 14 Ves. 28. In that case the Lord Chancellor thought the principle correct.

The jurisdiction was exercised in Bromley *v.* Holland after two unsuccessful applications to the summary jurisdiction of a court of law.

The application was on a different ground, and the Master of the Rolls said, "The plaintiff shall not now avail himself of any objection that was the ground of the application to the King's Bench."—(Sed. Qu.)

He also expressed an opinion, which is evidently correct, that the refusal of a summary application to set aside the annuity would not be any objection to the same ground being taken again whenever it was endeavoured to enforce it.

VII. The Consequences of Invalidating an Annuity.

The terms of setting aside an annuity in equity are the taking an account of the consideration paid for the purchase with interest at five per cent., deducting the payments from time to time made, which are to be applied in the first place in discharge of the interest and then of the principal, and in case any thing upon taking such account is due from the grantor he is to pay it to the grantee or his Assignee—Bromley *v.* Holland, 7 Ves. 29.

And this is the course adopted in setting aside annuities upon summary applications to courts of law.

Premiums of insurance on the life not allowed—*ex parte* Shaw, 5 Vesey, 620.

Allowed under special circumstances, the Bill offering to pay any fair and reasonable demands, and the insurance having been proposed by the grantor in a letter as a reasonable term—Hoffman *v.* Cooke, 5 Ves. 623.

If the balance of account is against the grantor it cannot be recovered—Bromley *v.* Holland, 7 Ves. 29.

An annuity being vacated for non-conformity with the Act, the purchase-money may be recovered back in an action for money had and received—Shove *v.* Webb, 1 T. R. 732.

No. I. 17 Geo. III. c. 26.

the Court may order Deed to becancelled,&c.

the consideration or any part of it is paid in goods; or if any part of the consideration is retained (2.) on pretence of answering the future payments of the annuity or any other pretence; in all and every of the aforesaid cases it shall and may be lawful for the person by whom the annuity or rent-charge is made payable to apply to the court in which any action is brought for payment of the annuity on judgment entered, by motion, to stay proceedings on the judgment or action; and if it shall appear to the court that such practices as aforesaid or any of them have

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Qu. As to this form of action when part of the consideration is an antecedent debt for goods sold —*ibid.*

A mere surety for the annuity is not liable to this action, although he has signed a receipt for the money—Straton *v.* Rastall, 2 T. R. 366.

The action may be maintained if the grantor has procured the Warrant of Attorney to be set aside on motion, though the other securities remain, Scurfield *v.* Gowland, 6 East, 241; or if even the grantor has dissented from the annuity and refused to pay it on the ground of its invalidity —Waters *v.* Mansell, 3 Taunt. 56.

The payments may be set off—Hicks *v.* Hicks, 3 East, 16; although made above six years before, the Statute of Limitations not being replied—*ibid.*

Qu. If it is replied.

Qu. As to allowing a computation of interest, interest not being usually allowed in actions for money had and received.

Lord Eldon in Jones *v.* Harris, 9 Ves. 492, says, that the general opinion at the time when the Act was passed was, that if a proper memorial was not registered the grantee should neither have his annuity or the money back, *the Act meaning to put an end to such transactions.* That would have been a much wiser course than that which has prevailed in later cases, for it is a mockery to say that a man shall be relieved upon such terms. In general, persons who are under the necessity of raising money in this way would not dare to take the objection under the Act, when the consequence would be an immediate execution.

The effect therefore of these decisions that the consideration may be recovered back with interest is instead of the protection intended by the Act to increase the evil. He proceeds to add, that the contrary is settled by authority.

Previous to these observations being promulgated from the Bench, the liability to refund had been the subject of opposite opinions in Mr. Powell's Essay on the Law of Contracts, and Mr. Plowden's Treatise on Annuities.—The opinions of the former gentleman being in favour of the right of repetition, and the latter in opposition to it. The present Editor, in endeavouring to illustrate the general nature of a right of repetition, in an Essay submitted to the public, on the action for money had and received, took the opportunity of expressing his own ideas upon the subject, and, in conformity with those principles of jurisprudence which he has often endeavoured, however unsuccessfully, to promote, took occasion to observe, in answer to the arguments of Mr. Plowden, that "a great part of his reasoning will be answered, by admitting, that a man who has neglected to take the measures prescribed by law for securing his annuity, or to speak more correctly, who has fallen into some mistake in endeavouring to comply with the requisites of the law, shall not be allowed, in the first instance, to adduce his own neglect or mistake as a ground of prejudice against the opposite party; he shall not allege, that in consequence of a blunder in the registry he will no longer receive his annuity, but reclaim his principal, any more than a person who has made a fraudulent insurance, shall come in the first instance, and shewing, that by his own fraud the policy was void, insist upon the premium being retained; but when the other party has taken advantage of the invalidity of the contract, has found out some formal technical objection, and refused, in consequence, to adhere to his engagement, can it be contended that he has any right, in point of natural justice, to retain the money that he received for a purpose which he refuses to execute? By the protection of the law he shall not be placed in a situation which he considers less advantageous than if his engagements had not been made; but shall he be therefore enabled to put himself in a better situation, than if there had been no engagement at all, by the amount of the money which he wishes to retain? He shall not be injured; but shall he, therefore, be allowed to defraud? And as to any supposed agreement of not reclaiming the principle is an essential part of the supposition, that the annuity will be duly paid; it is blowing hot and cold to adopt one part of the supposition and reject the other. If the grantee of the annuity does not properly provide for its security, let the grantor avail himself of positive law and avoid it; but let him not, at the same time, retain the purchase money and withhold the security; more especially, let not the the conduct of the man who requires to be paid either the one or the other, who only *certat de damno vitando* against the other, *qui certat de lucro captando* be the object of reproach." Reviewing these observations, after an interval of thirteen years, he is happy in retaining his preference to the principles which have been established by the authority of judicial decisions, over the incidental observations by which they have been assailed; feeling that if the object of the legislature was to abolish the contract under consideration, it would have been more consistent to have given that intention its full and proper effect, by at once attaching illegality to the substance of the contract, and precluding the repetition of money paid as the consideration of it, than under the pretext of regulation and publicity to have entangled it in a set of obscure and unintelligible formalities, de-

No. I.
17 Geo. III.
c. 26.

been used, it shall and may be lawful for the court to order the deed bond instrument or other assurance to be cancelled, and the judgment if any has been entered, to be vacated.

V. And be it further enacted, That a particular roll shall be provided and kept by the clerks of the inrollments in Chancery or their deputy, on which such memorials shall be entered, and that every such memorial shall be duly inrolled in order of time as the same shall be brought to the office; and the said clerks of the inrollments or their deputy shall specify upon the roll the certain day hour and time on which such memorial is brought to the office, and shall grant a certificate of the inrollment thereof when required; and that there shall be paid for the inrollment of every such memorial the sum of one shilling and no more in case the same do not exceed two hundred words; but if such memorial shall exceed two hundred words, then after the rate and proportion of sixpence for every hundred words and the like fees for every certificate and copy given; and the fee of one shilling for every search in the office and no more.

Directions relating to inrollment of Memorials.

Clerks' Fees.

VI. And be it further enacted by the authority aforesaid, That all contracts for the purchase of any annuity with any person being under the age of twenty-one years shall be and remain utterly void, any attempt to confirm the same after such person shall have attained the age of twenty-one years notwithstanding: And that if any person shall either in person by letter agent or otherwise howsoever procure engage solicit or ask any person being under the age of twenty-one years to grant or attempt to grant any annuity or rent-charge, or to execute any bond deed or other instrument for securing the same; or shall advance or procure or treat for any money to be advanced to any person under the age of twenty-one years upon consideration of any annuity or rent-charge to be secured or granted by such infant after he or she shall have attained his or her age of twenty-one years; or shall induce solicit or procure any infant upon any treaty or transaction for money advanced or to be advanced to make oath or to give his or her word of honour or solemn promise that he or she will not plead infancy or make any other defence against the demand of any such annuity or rent-charge or the repayment of the money advanced to him or her when under age; or that when he or she comes of age he or she will confirm or ratify or in any way substantiate such annuity or rent-charge; every such person shall be guilty of a misdemeanor and being thereof lawfully convicted in any court of assize oyer and terminer or general gaol delivery shall and may be punished for the said offence by fine imprisonment or other corporal punishment as the court shall think fit to award.

All Contracts for Purchase of Annuities with any person under 21 Years, void.

Any Person who shall procure or solicit any Minor to grant an Annuity, &c.

shall be punished, &c.

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luding the one party by subjecting him to the loss of the advantage for which he had stipulated, and of the money which he had advanced, and supporting the other in his iniquitous retention of the price of an engagement which he had not the honesty to perform.

VIII. Of Assignments of Annuities.

In the case of the Duke of Bolton *v.* Williams, 2 Ves. jun. 138, (among many other points,) it was held by Lord Loughborough, than an assignment of an annuity is required to be registered as well as an original grant, but this as a general question was not necessary to be decided, as the transaction related to the grant of an original annuity including the transfer of former annuities, and invalid on other grounds; and in Dixon *v.* Birch, 2 Hen. Bl. 307—Bromley *v.* Greathead, Hunt on Annuities, 188—it was ruled and is now settled, that an assignment of an annuity is not within the Act.

(1.) A, an attorney, purchases an annuity of B, and having paid the consideration-money, receives from B, the amount of a bill for business done, including by mistake, a charge for searches for incumbrances, which searches had never been made: Held, that the payment of this charge, so inadvertently made, was not a return of the consideration-money within the meaning of 17 Geo. 3. c. 26. s. 4. Hurd *v.* Girdlestone. 1 Marsh 407. S. C. 6 Taunt. 8.

(2.) The grantor of an annuity was required for further security, to make her will and deposit it with the grantee, and to make an affidavit that she would not revoke it; a magistrate refused to let her swear the affidavit, but the grantee retained the will.—10*l.* which had been retained till the grantee should make the affidavit, were then paid to the grantee. The memorial did not notice the will. Held, that the memorial was therefore bad, but that the 10*l.* was not money retained within § 4, of the stat. 17 Geo. 3. c. 26. Ex parte Mackenzie, 4 Taunt. 346.

No. I.
17 Geo. III. c. 26.

Solicitors, &c. who take more than 10*s.* for 100*l.* for procuring Money for Annuities, punished, &c.

VII. And be it enacted by the authority aforesaid, That all and every solicitors and solicitor scriveners and scrivener brokers and broker and other persons or person who from and after the passing of this Act shall ask demand accept or receive directly or indirectly any sum or sums of money or any other kind of gratuity or reward for the soliciting or procuring the loan and for the brokerage of any money that shall be actually and *bona fide* advanced and paid as and for the price or consideration of any such annuity or rent-charge over and above the sum of ten shillings for every one hundred pounds so actually and *bona fide* advanced and paid shall be deemed and adjudged guilty of a misdemeanor; and being lawfully convicted of such offence in any court of assize oyer and terminer or general gaol delivery shall and may for every such offence be punished by fine and imprisonment or one of them at the discretion of the court; and that the person or persons who shall have paid or given any sum or sums of money gratuity or reward shall be deemed a competent witness or witnesses to prove the same.

Cases to which Act not extend.

VIII. And be it further enacted, That nothing in this Act contained shall extend to any annuity or rent-charge given by will or by marriage settlement or for the advancement of a child; nor to any annuity or rent-charge secured upon lands of equal or greater annual value whereof the grantor was seised in fee-simple or in fee-tail in possession at the time of the grant or secured by the actual transfer of stock in any of the public funds the dividends whereof are of equal or greater annual value than the said annuity; nor to any voluntary annuity granted without regard to pecuniary consideration; nor to any annuity or rent-charge granted by any body corporate or under any authority or trust created by Act of Parliament; nor to any annuity where the sum to be paid does not exceed ten pounds annually, unless there be more than one such last mentioned annuity from the same grantor or grantors, to or in trust for the same person or persons.

[No. II.] 53 George III. c. 141.—An Act to repeal an Act of the Seventeenth Year of the Reign of his present Majesty, intituled, *An Act for registering the Grants of Life Annuities; and for the better Protection of Infants against such Grants;* and to substitute other Provisions in lieu thereof.—[14*th July* 1813.]

53 Geo. III. c. 141.
17 Geo. 3. c. 26. repealed except as to Annuities or Rent Charges.

'WHEREAS it is expedient that an Act, passed in the seventeenth 'year of his present Majesty, intituled An Act for registering the 'Grants of Life Annuities; and for the better Protection of Infants 'against such Grants should be repealed and other provisions substi-'tuted in lieu thereof:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty by and with the consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That the said recited Act shall be and the same is hereby repealed, save and except so far as regards any annuities or rent charges which have been granted before the passing of this Act.

Annuities, &c. inrolled in Chancery.

II. And be it further enacted, That within thirty days after the execution of every deed bond instrument or other assurance whereby an annuity or rent-charge shall from and after the passing of this Act be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives a memorial of the date of every such deed bond instrument or other assurance of the names of all the parties and of all the witnesses thereto, and of the person or persons for whose life or lives such annuity or rent-charge shall be granted and of the person or persons by whom the same is to be beneficially received, the pecuniary consideration or considerations for grant-

No. II.
53 Geo. III. c. 141.

ing the same and the annual sum or sums to be paid shall be inrolled in the high court of Chancery in the form or to the effect following with such alterations therein as the nature and circumstances of any particular case may reasonably require:

Date of Instrument.	Nature of Instrument.	Names of Parties.	Names of Witnesses.	Name or Names of Person or Persons by whom Annuity or Rent Charge to be beneficially received.	Person or Persons for whose Life or Lives the Annuity or Rent Charge is granted.	Consideration and how paid.	Amount of Annuity or Rent Charge.
10 Aug. 1813.	Indentures of Lease and Release.	A. B. of one Part. C. D. of the other Part.	E. F. of G. H. of	C. D.	A. B.	£100 paid in Money. £500 paid in Notes of the Governor and Company of the Bank of England, or other Notes or Bills of Exchange as the case may be.	£100 a Year.
Same Date.	ond in Penalty of £1,200.	A. B. to C. D.	E. F. G. H.	For securing the same Annuity or Rent Charge.			
Same Date.	Warrant of Attorney to confess Judgment on the same Bond.	A. B. to I. K. and L. M. Attornies of Court of King's Bench.	E. F. G. H.				

otherwise every such deed bond instrument or other assurance shall be null and void to all intents and purposes.

III. Provided always and be it further enacted, That if any such annuity shall be granted by or to or for the benefit of any company exceed- Companies described by their usual Form.

No. II. 53 Geo. III. c. 141.

ing in number ten persons, which company shall be formed for the purpose of granting or purchasing annuities, it shall be sufficient in any such memorial, to describe such company by the usual firm or name of trade.

Names of Parties beneficially interested, stated.

IV. And be it further enacted, That in every deed bond instrument or other assurance, whereby any annuity or rent charge shall from and after the passing of this Act be granted or attempted to be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, where the person or persons to whom such annuity shall be granted or secured to be paid, shall not be entitled thereto beneficially the name or names of the person or persons who is or are intended to take the annuity beneficially shall be described in such or the like manner as is hereinbefore required in the inrolment; otherwise every such deed instrument or other assurance shall be null and void.

Copies of Deed or Instruments securing Annuities may be obtained.

V. And be it further enacted, That in case any person or persons by whom any annuity or rent charge of which such particulars as aforesaid are hereby required to be inrolled shall for the time being be payable, shall be desirous of obtaining a copy of every or any deed bond instrument or other assurance, whereby such annuity or rent charge was granted, and of such his her or their desire, shall give twenty-one days' notice in writing to the person or persons for the time being entitled to such annuity or rent charge, such person or persons shall on or before the expiration of such twenty-one days, unless prevented by fire or other inevitable accident, and in that case if the assurances shall not be destroyed by such accident, then as soon after as such impediment shall be removed send or deliver to the person or persons requiring the same, a copy of every deed bond instrument or other assurance, whereby such annuity or rent charge was granted or of such of the assurances as in such notice shall be required; and such last mentioned person or persons shall at the time of receiving the same pay to the person or persons furnishing the same a sum after the rate of sixpence for every one hundred words contained in every such copy, and also the reasonable costs of sending or delivering the same; and the person or persons holding the original instruments by which such annuity or rent charge shall be secured shall suffer the person or persons to whom such copies shall be delivered or sent, to examine the same with the originals; and in case such copies shall not be sent or delivered, or the person or persons holding the original instruments shall refuse to suffer such copies to be examined therewith according to the direction in this Act, it shall be lawful for the person or persons by whom the annuity or rent charge is payable to take out a summons from any of his Majesty's justices of his Courts of King's Bench and Common Pleas, requiring the person or persons neglecting to send or deliver such copies or refusing to suffer the same to be examined with the original instrument as aforesaid, to appear before such Judge and shew cause in the premises; and it shall and may be lawful for the Judge before whom such person or persons shall be summoned to make such order for the production of the instruments by which such annuity or rent charge shall be secured, and for suffering the complainant to take copies thereof and examine the same or the copies delivered with the original instruments and otherwise in the premises, as to such Judge shall seem meet.

Fee.

Summons.

In what Cases Proceedings against Grantor of Annuity stayed.

VI. And be it further enacted, That if any part of the consideration for the purchase of any such annuity or rent charge shall be returned to the person advancing the same, or in case such consideration or any part of it shall be paid in notes, if any of the notes, with the privity and consent of the person advancing the same shall not be paid when due, or shall be cancelled or destroyed without being first paid; or if such consideration is expressed to be paid in money but the same or any part of it shall be paid in goods; or if the consideration or any part of it shall be retained on pretence of answering the future payments of the annuity or rent charge or any other pretence; in all and every the afore-

No. II.
53 Geo. III. c. 141.

said cases it shall be lawful for the person by whom the annuity or rent charge is made payable, or whose property is liable to be charged or affected thereby, to apply to the court in which any action shall be brought for payment of the annuity or rent charge or judgment entered by motion to stay proceedings on the action or judgment, and if it shall appear to the court that such practices as aforesaid or any of them have been used, it shall and may be lawful for the Court to order every deed bond instrument or other assurance, whereby the annuity or rent charge is secured to be cancelled, and the judgment if any has been entered to be vacated.

Book kept by Clerks of Enrolments of Chancery.

VII. And be it further enacted, That a particular book shall be provided and kept by the clerks of the enrolments in Chancery or their deputy, in which such particulars as hereinbefore are mentioned shall be entered alphabetically by the names of the grantors, in order of time as the same shall be brought to the office; and the said clerks of the enrolments or their deputy shall specify in the book the certain day hour and time on which such particulars are brought to the office, and shall grant a certificate of the entry thereof when required; and that there shall be paid for every such entry twenty shillings only, and the fee of one shilling for every certificate and copy given, and the fee of one shilling for every search in the office and no more.

Fees.

Contracts for Purchase of Annuities, by Persons under age, void.

VIII. And be it further enacted, That all contracts for the purchase of any annuity or rent charge with any person being under the age of twenty-one years, shall be and remain utterly void; any attempt to confirm the same after such person shall have attained the age of twenty-one years notwithstanding: And that if any person shall either in person by letter agent or otherwise howsoever, procure engage solicit or ask any person being under the age of twenty-one years, to grant or attempt to grant any annuity or rent charge, or to execute any bond deed or other instrument for securing the same, or shall advance or procure or treat for any money to be advanced to any person under the age of twenty-one years, upon consideration of any annuity or rent charge to be secured or granted by such infant after he or she shall have attained his or her age of twenty-one years, or shall induce solicit or procure any infant upon any treaty or transaction for money advanced or to be advanced, to make oath or to give his or her word of honour or solemn promise, that he or she will not plead infancy or make any other defence against the demand of any such annuity or rent charge or the repayment of the money advanced to him or her when under age, or that when he or she comes of age he or she will confirm or ratify or in any way substantiate such annuity or rent charge, every such person shall be guilty of a misdemeanor; and being thereof lawfully convicted in any court of assize *Oyer* and *Terminer* or general gaol delivery, shall and may be punished for the said offence by fine imprisonment or other corporal punishment as the Court shall think fit to award.

Endeavouring to induce Infants to grant Annuities.

Misdemeanor.

Acting as Solicitors, &c. in such cases.

IX. And be it further enacted, That all and every solicitors and solicitor scriveners and scrivener brokers and broker and other persons or person, who from and after the passing of this Act shall ask demand accept or receive directly or indirectly any sum or sums of money or any other kind of gratuity or reward for the soliciting or procuring the loan, and for the brokerage of any money that shall be actually and *bona fide* advanced and paid as and for the price or consideration of any such annuity or rent charge over and above the sum of ten shillings for every one hundred pounds so actually and *bona fide* advanced and paid, shall be deemed and adjudged guilty of a misdemeanor, and being lawfully convicted of such offence in any court of assize *Oyer and Terminer* or general gaol delivery, shall and may for every such offence be punished by fine and imprisonment or one of them at the discretion of the Court; and that the person or persons who shall have paid or given any sum or sums of money gratuity or reward, shall be deemed a competent witness or witnesses to prove the same.

Misdemeanor.

Witnesses.

Proviso for Scotland or Ireland, and Annuities granted by Will, &c.

X. And be it further enacted, That this Act shall not extend to *Scot-*

No. II.
53 Geo. III. c. 141.

land or *Ireland* nor to any annuity or rent charge given by will or by marriage settlement or for the advancement of a child, nor to any annuity or rent charge secured upon freehold or copyhold or customary lands in *Great Britain* or *Ireland* or in any of his Majesty's possessions beyond the seas, of equal or greater annual value than the said annuity over and above any other annuity, and the interest of any principal sum charged or secured thereon of which the grantee had notice at the time of the grant, whereof the grantor is seised in fee simple or fee tail in possession, or the fee simple whereof in possession the grantor is enabled to charge at the time of the grant or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity; nor to any voluntary annuity or rent charge granted without regard to pecuniary consideration or money's worth; nor to any annuity or rent charge granted by any body corporate, or under any authority or trust created by Act of Parliament.

PART III.

CLASS VII.

*Gaming.**

[No. I.] 33 Henry VIII. c. 9.—The Bill for the maintaining Artillery, and the debarring of unlawful Games.

[Inserted Part VI. Class XX. No. I.]

[No. II.] 16 Charles II. c. 7.—An Act against deceitful, disorderly, and excessive Gaming.

'WHEREAS all lawful games and exercises should not be otherwise used than as innocent and moderate recreations and not as constant trades or callings to gain a living or make unlawful advantage thereby; and whereas by the immoderate use of them many mischiefs and inconveniencies do arise and are daily found to the maintaining and encouraging of sundry idle loose and disorderly persons in their dishonest lewd and dissolute course of life, and to the circumventing deceiving cousening and debauching of many of the younger sort both of the nobility and gentry and others to the loss of their precious time and the utter ruin of their estates and fortunes and withdrawing them from noble and laudable employments and exercises:' 16 Car. II. c. 7.

II. Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same, That if any person or persons of any degree or quality whatsoever at any time or times after the nine-and-twentieth day of *September* which shall be in the year of our Lord God one thousand six hundred sixty and four, do or shall by any fraud, shift cousenage circumvention deceit or unlawful device or ill practice whatsoever in playing at or with cards dice tables tennis bowles kittles shovel-board; or in or by cock-fightings horse-races dog-matches foot-races or other pastimes game or games whatsoever or in or by bearing a share or part in the stakes wagers or adventures, or in or by betting on the sides or hands of such as do or shall play at ride or run as aforesaid win obtain or acquire to him or themselves or to any other or others, any sum or sums of money or other valuable thing or things whatsoever; that then every person and persons so offending as aforesaid, shall *ipso facto* forfeit and lose treble the sum or value of money or other thing or things so won gained obtained or acquired; the one moiety thereof to our Sovereign Lord the King his heirs and successors, and the other moiety thereof unto the person or persons grieved or who shall lose the money or other thing or things so gained; so as every such loser and person grieved in that behalf do or shall prosecute and sue for the same within six calendar months next after such play: And in default of such prosecution, the same other moiety to such person or persons as shall or will prosecute or sue for the same within one year next after the said six months expired: And that the said forfeitures shall or may be sued for or recovered by action of

Deceits and Cousenages in Gaming.

How to be sued for and recovered.

* Those Statutes which relate to gaming principally as a matter of penal law, are inserted in Part VI. Class 20; but the Titles are noted in this Class as they occur in chronological order.

No. II. 16 Car. II, c. 7.

debt bill plaint or information in any of his Majesty's courts at *Westminster*, wherein no essoin protection or wager of law shall be allowed; And that all and every such plaintiff or plaintiffs informer or informers, shall in every such suit and prosecution have and recover his and their treble costs against the person offending and forfeiting as aforesaid; any law statute custom or usage to the contrary in any wise notwithstanding.

Prevention of excessive and immoderate Gaming. 1 Vent. 253. 1 Lutw. 160. 2 Mod. 54. 1 Salk. 344. 2 Lev. 94. 4 Mod. 409.

III. And for the better avoiding and preventing of all excessive and immoderate playing and gaming for the time to come, be it further ordained and enacted by the authority aforesaid, That if any person or persons shall at any time or times after the nine-and-twentieth day of *September* aforesaid, play at any of the said games or any other pastime game or games whatsoever (other than with and for ready money), or shall bet on the sides or hands of such as do or shall play thereat, (1.) and shall lose any sum or sums of money or other thing or things so played for exceeding the sum of one hundred pounds (2.) at any one time or meeting upon ticket or credit or otherwise, and shall not pay down the same at the time when he or they shall so lose the same, the party and parties who loseth or shall lose the said monies or other thing or things so played or to be played for above the said sum of one hundred pounds, shall not in that case be bound or compelled or compellable to pay or make good the same; but the contract and contracts for the same and for every part thereof, and all and singular judgments statutes recognizances mortgages conveyances assurances bonds bills specialties promises covenants agreements and other acts deeds and securities whatsoever, which shall be obtained made given acknowledged or entered into for security or satisfaction of or for the same or any part thereof, shall be utterly void and of none effect: (3) And that the said person or persons so winning the said monies or other things shall forfeit and lose treble the value of all such sum and sums of money or other thing or things, which he shall so win gain obtain or acquire above the said sum of one hundred pounds; the one moiety thereof to our said Sovereign Lord the King his heirs and successors; and the other moiety

The Penalty.

(1.) In Pope *v.* St. Leger, 1 Salk 344—4 Mod. 409—5 Mod. 4—1 Lutw. 484. it was ruled, that the statute did not extend to a bet, as to the proper manner of playing at Backgammon—being not on the right of the play but on the chance of the play, which is collateral. But in Brown *v.* Lunn, 2 H. B. 43. Lord Loughborough refused to try a cause upon a wager, as to the chances of the dice at Hazard—and ordered it to be struck out of the paper as being of a nature highly improper to be made the foundation of an action—with a proviso, that it should be restored in case the Court should be of a different opinion, and the Court refused an application for the cause to be restored. Gould, J. said, "The game of Hazard stands condemned by the law of England; there are many statutes which make it illegal, and nothing can be more injurious to the morals of the nation, than a public discussion of this nature, before an audience whose curiosity is excited to attend the time of such questions. The refusal, therefore, to try it, was both laudable and legal." Heath, J. "All games at Dice, except Backgammon, are prohibited by law, and I think it would be vilifying and degrading Courts of Justice, if they were to allow, by means of a wager, a discussion on prohibited games." The counsel for the defendant had urged, with respect to the case of Pope *v.* St. Leger, that the bet was concerning a legal game, Backgammon being excepted out of the Statutes, which prohibited other games at dice. The reporter properly notices, that that could not be the ground of the decision, as the exemption in favour of Backgammon was first made by statute 15 Geo. 2. c. 19. sec. 9. (and which is only an exception from the particular provisions of that statute.) The summary decision in Brown *v.* Lunn can hardly be sufficient to constitute a direct authority upon the mere question of law, with respect to the proper method of playing at any game or chance, (supposing the question to be raised in a direct and regular manner,) in opposition to the express authority of Pope *v.* St. Leger.

(2.) There are several cases as to the application of this clause, where different sums exceeding in the whole 100*l.* were lost to different persons at the same time, or to the same person at different times, and with respect to contracts being distinct, for which see Noel *v.* Reynolds, 2 Show. 185—Danvers *v.* Thistleworth, cited 1 Salk. 345—Dickson *v.* Pawlet, 1 Salk. 345.—Edgebury *v.* Rosendale, 2 Lev. 94—S. C. by the name of Hedgeborrow *v.* Rosenden, 1 Ventr. 253—Stanhope *v.* Smith, 5 Mod. 352—Hudson *v.* Mulliner, 3 Keb. 672. (and which cases are collected in Viner's Abridgment, title GAMING.) The cases are immaterial with respect to their direct application, since the statute 9 Anne, c. 14. *post*; but query whether they may not be applied as referrable to contracts of Gaming above or below 10*l.* and see Notes to that Statute.

(3.) See Notes to Statute 9 Anne, *post*.

thereof to such person or persons as shall prosecute or sue for the same within one year next after the time of such offence committed; and to be sued for by action of debt bill plaint or information in any of his Majesty's courts of record at *Westminster*, wherein no essoin protection or wager of law shall be allowed: And that every such plaintiff or plaintiffs informer or informers, shall in every such suit and prosecution have and receive his treble costs against the person and persons offending and forfeiting as aforesaid; any law custom or usage to the contrary notwithstanding.

No. II. 16 Car. II. c. 7.

[No. III.] 10 & 11 William III. c. 17.—An Act for Suppressing of Lotteries.

[Inserted Part VI. Class XX. No. III.]

[No. IV.] 9 Anne, c. 6.—An Act for reviving, continuing and appropriating certain Duties upon several Commodities to be exported; and certain Duties upon Coals to be water-born and carried Coastwise; and for granting further Duties upon Candles, for Thirty-two Years; to raise Fifteen Hundred Thousand Pounds, by way of a Lottery, for the Service of the Year One Thousand Seven Hundred and Eleven; and for suppressing such unlawful Lotteries, and such Insurance Offices, as are therein mentioned,

[Inserted Part VI. Class XX. No. IV.]

[No. V.] 9 Anne, c. 14.—An Act for the better preventing of excessive and deceitful Gaming.

9 Anne, c. 14.

Mortgages, &c. where the Consideration is for Money won by Gaming or for Repayment of Money lent at Gaming, &c. shall be void.

'WHEREAS the laws now in force for preventing the mischiefs which may happen by gaming, have not been found sufficient for that 'purpose;' Therefore for the further preventing of all excessive and deceitful gaming, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the first day of *May* one thousand seven hundred and eleven all notes bills, (1.) bonds, (2.) judgments, (3.)

(1.) In Hussey *v.* Jacob, 1 Salk. 344; it was said, that if a bill accepted for money lost at play had been assigned to a stranger *bona fide* upon good consideration, he had not been within the statute (16 Charles II.) for he was not privy to the Act, but an honest creditor. But in Bowyer *v.* Bampton, 2 Str. 1155. it was ruled, that the statute of Anne extends to render void bills and notes in the hands of an innocent indorsee, and such is now the established law. The same was ruled with respect to bills void for usury in Lowe *v.* Walker, Doug. 705---see the other cases connected with that doctrine, and which apply equally to the case of gaming in the general note on the law of usury---*ante* Class V. No. 1.

(2.) In an anonymous case, 2 Mod. 279. 29 Chas. II. it is stated, that A. wins 100*l.* of B. at play, and A. owing C. 100*l.* brings C. to B. who owned the debt, and B. gives C. a bond for the 100*l.* C. not being privy to the matter accepted the bond, and afterwards C. put it in suit. The obligor pleaded the statute 16 Chas. II.; but the plaintiff, disclosing the whole matter, the Court were of opinion upon demurrer that it was not a case within the statute, and gave judgment for the plaintiff. The case is referred to by Holt, C. J. in Hussey *v.* Jacob, 1 Salk. 344; but Qu. if this case would now be allowed as law.

(3.) A young man gives bills for the amount of a gaming debt, and when they were due he renewed them with the then holder, and for the last bills he confessed a judgment. The Court of C. B. would not set aside the judgment, unless he could affect the holder of the bills with notice, but permitted him to try that fact in an issue---George *v.* Stanley, 4 Taunt. 683.

No. V. 9 Anne, c. 14.

mortgages or other securities, (4.) or conveyances whatsoever, given granted drawn or entered into or executed by any person or persons whatsoever, where the whole or any part of the consideration of such conveyances or securities shall be for any money or other valuable thing whatsoever won by gaming or playing at cards dice tables tennis bowls or other game or games (5.) whatsoever, or by betting on the sides (6.) or

(4.) In Young *v.* Moore, 2 Wils. 67. it was insisted, that though the statute had made all writings and securities for money won at play void, that it had not made parol contracts for money won at play void, to this it was answered and resolved by the Court, that as the statute hath made all securities for money won at play void *a fortiori*, all parol contracts of this sort are void, and the court distinguished the case from that of Barjeau *v.* Walmsley, *infra* Note 7, on the ground of the latter being for money lent. It is observable, that this provision as to avoiding the security makes no distinction between the gaming being for 10*l.* or less; and that by the express terms of the statute a security for money won by gaming, although less than 10*l.* would be void. In Blaxton *v.* Pye, 2 Wils. 309. it was held, that upon a bet of 14*l.* against 8*l.* on a horse-race, no action could be maintained against the loser of 8*l.* as he would not have been entitled to receive the 14*l.* and that the contract was therefore *nudum pactum*, and the same was decided in Clayton *v.* Jennings, 2 Bl. Rep. 706; and Lord Kenyon, referring to the cases of Blaxton *v.* Pye, in Good *v.* Elliott, 3 T. R. 706, said, that had the wager been within the limits allowed by the statutes, there is no doubt but that it would have been held good; in Bulling *v.* Frost, 1 Esp. Cas. N. P. his Lordship held, that an action might be maintained to recover the sum of 3*l.* 10*s* lost at all-fours; and in M'Allister *v.* Huden, 2 Campb. N. P. 138. it was ruled, by Lawrence, J. that an action might be maintained upon a wager for less than 10*l.* on a horse-race. It seems, however, very doubtful whether in any of these cases the present provisions of the statute was sufficiently adverted to; and whether the enactment, that all securities for money won by gaming should be void, ought not to be considered as vitiating all contracts for money so won, so far as affects the right of recovery, although the subsequent provision for recovering back money actually paid relates only to sums amounting to 10*l.* In the case of Young *v.* Moore, the action was for above 10*l.* and the question consequently did not arise;—but see Note 7, *post*.

(5.) In Jeffereys *v.* Walter, 1 Wils. 220. the Court of B. R. inclined to give judgment for the defendant, that cricket was a game within the statute, but the case stood over and the parties agreed. In Goodburn *v.* Manley, 2 Str. 1159. it was held, that a wager on a horse-race was a game within this Act, being mentioned in the Statute 16 Chas. II.; and in Lynall *v.* Longbottom, 2 Wills. 36. determined upon a different ground, it was said by Willis, J. in delivering the opinion of the Court, it is agreed on all hands that a foot-race is a game within the Statute 9 Anne; and in Brown *v.* Berkeley, Cowp. 282. the court, upon the authority of that case, ruled a foot-race against time to be within the Act, and gave judgment for the defendant in an action of covenant upon such a wager. The case of Blaxton *v.* Pye, mentioned in the last note, and several other cases also, clearly treat horse-racing as a game within the statute.

In Clayton *v.* Jennings, 2 Bl. Rep. 706. (referred to in the preceding note,) Aston, J. mentioned the case of Connor *v.* Quick, in the King's Bench about ten years before, when the Court took a distinction between racing a horse for 50*l.* which was lawful, and betting on the side of a horse which was not so.—(But see the last note.)

In Johnson *v.* Burns, 4 T. R. a wager under 10*l.* upon a horse-race for less than 50*l.* prohibited by Statute 13 G. III. c. 19.) was ruled to be illegal. In Ximenes *v.* Jaques, 6 T. R. 499. judgment was arrested in an action on a wager for 100 guineas, that the plaintiff would perform a journey in a post-chaise and pair within a given time, but no reasons for the judgment were stated by the Court. In Whaley *v.* Pigot, 2 B. & P. 51. judgment was arrested in an action on a wager that a horse of the defendant should perform a journey in a less time than two horses of the plaintiff, to be placed on the road as the plaintiff should think proper. Lord Eldon, after generally noticing the provisions of the Statutes, 16 Charles II. and 9 Anne, said, "The 16 Chas. II. does not in terms avoid any contract—[which observation, however, is not correct, the second section making an express provision to that effect]—but the transaction on which the contract is founded being prohibited, the contract itself cannot be supported. The 9th of Anne expressly avoids the contract—[but see the preceding note.] These statutes were followed by 13 Geo. II. c. 19. and 19 Geo. II. c. 34; but if many contracts founded in horse-racing have been held illegal previous to these statutes, it might be found difficult to maintain that such horse-racing could now be deemed legal which before had been deemed illegal. But the 13 Geo. II. having prohibited many species of horse-racing, the law seems to have implied that such species of horse-racing as were not prohibited by that statute by not being prohibited became legal; and the 18th George II. having taken away some of the prohibitions and penalties of 13 Geo. II. the same kind of reasoning seems to have been applied, namely, that these species of racing, with respect to which certain restrictions were taken away, were thereby altogether legalized. There seems to be much ground for arguing from the nature of the 16th Charles II. and 9th Anne, that these Acts ought to be construed strictly, in order to enforce the principles on which they are founded, namely, to prohibit all horse-racing; and that the 13th and 18th of Geo. II. are from their nature to be so construed as to encourage the breed of horses, and to permit that species of horse-racing only

No. V.
9 Anne, c. 14.

hands of such as do game at any of the games aforesaid, or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting (7.) as aforesaid, or lent or advanced at the time and place of such play to any person or persons so gaming or betting as aforesaid, or that shall during such play so play or bet, shall be utterly void frustrate and of none effect, to all intents and purposes whatsoever; any statute law or usage to the contrary thereof in any wise notwithstanding; and that where such mortgages securities or other conveyances shall be of lands tenements or hereditaments or shall be such as incumber or affect the same, such mortgages securities or other conveyances shall enure and be to and for the sole use and benefit of, and shall devolve

And where such Mortgages, &c. shall encumber any Lands, &c. they shall devolve to such Person as should have been intitled to them, in case such Grantor had been dead, &c. And all Conveyances to hinder such Lands from devolving, &c. shall be void. See 2 Bur. 1080. 1 Wills. 220. 2 Wills. 36, 67. 309.

called racing on the Turf. It is to be observed, that the 13 Geo. II. speaks of entering, placing, starting, &c. and that the expression 'any place or places whatever,' used in 18 Geo. II. can hardly mean England;" and afterwards, on delivering the opinion of the Court, his Lordship said, "Upon inquiry of the Judges of the Court of King's Bench we find that the judgment of that Court in Ximenes *v.* Jaques, proceeded on an opinion, that the 13th and 18th Geo. II. relate to *bona fide* horse-racing only; without, therefore, again entering into the grounds before stated, it is sufficient for me to declare it to be the opinion of the Court, that the transaction described in this case is not that species of horse-race or match which is legalized by 13 and 18 Geo. II. and consequently that this action cannot be maintained." By a note inserted in Mr. Nolan's edition of Strange to the case of Goodburn *v.* Manley, it appears that it was objected in that case, that inasmuch as a late statute was made against horse-racing, that was an argument that horse-racing was not published by any of the former laws, for if it were, this statute need not have been made; and, therefore, it was said it would not be within the Statute of the 9th of Anne; but to this it was answered by the Court, that though horse-racing might not be unlawful, yet betting at horse-races was so; and that the late Act of Parliament speaks only of running of horses or horse-racing, but speaks nothing of betting at horse-races, which is the present case, and, therefore, that rule cannot anyways affect the present case.

I certainly cannot see any legitimate ground on which it could be held, that the Statute of 13th Geo. II. (the title and language of which are altogether prohibitory,) could be admitted to give validity to contracts, which, independently of those statutes, would be considered illegal; and there seems to be much more weight in the argument that the express probibition of such races, under particular circumstances, afforded evidence of their being considered as legal, independently of those prohibitions, although certainly many Acts are passed which manifest a great want of attention to the real purport and effect of preceding enactments. And in some of the cases which have occurred the attention seems to have been rather directed to the inquiry, whether the statutes of Geo. II. contained an exception to the prohibitions assumed to be contained in the preceding statutes, than to the question how far such prohibitions really attached, and it is very difficult to reconcile some of the cases with the established doctrine as to the general validity of wagers not affected by particular grounds of objection.

(6.) In an action for recovering money won on a bet, that J. C. could not run a certain distance in a given time, the Court directed a nonsuit—because it did not appear upon the statement of the case, that J. C. was playing at a game called a foot-race, and as it did not appear that he was playing at any game, there could not be any betting on his side.—Lynall *v.* Longbottom, 2 Wills. 36.

(7.) In Barjeau *v.* Walmsley, 2 Str. 1249, the plaintiff and defendant gamed together at tossing up, and the plaintiff having won all the defendant's money lent him ten guineas at a time and won it, till the defendant had borrowed 120 guineas, and in an action to recover the money, Lee, C. J. held, that this was not a case within the Act, for there is not the word *contract*, as in the Statute of Usury, and the word *securities*, as it stands in the Act, must mean lasting securities upon the estate. The Parliament (he said) might think there would be no great harm in a parol contract, where the credit was not likely to run very high, and therefore confined the Act to written securities, wherefore the plaintiff obtained a verdict.

In Allanbrook *v.* Hall, 2 Wils. 309, the defendant having lost above 10*l.* upon a bet, at a horse-race, requested the plaintiff to pay it for him, which he did, and the defendant objected, that this money being lost at gaming, and recoverable back again by the Statute 9 Anne, the action would not lie; but the Court held, that this was not a case within the Statute, upon the ground stated in the preceding case, and gave judgment for the plaintiff. In Robinson *v.* Bland, 2 Burr. 1077—1 Bl. 234, 256, it was ruled, that a Bill of Exchange given in France by one British subject to another, the consideration of which was partly money won at play, and partly money lent to play with, was void for the whole; but that the plaintiff might recover, on the common courts, the money lent. The case contains some important views with respect to the general question of the legality of a contract entered into in a different country.

No. V. 9 Anne, c. 14.

upon such person or persons as should or might have or be entitled to such lands tenements or hereditaments in case the said grantor or grantors thereof or the person or persons so incumbring the same had been naturally dead, and as if such mortgages securities or other conveyances had been made to such person or persons so to be intitled after the decease of the person or persons so incumbring the same; and that all grants or conveyances to be made for the preventing of such lands tenements or hereditaments from coming to or devolving upon such person or persons hereby intended to enjoy the same as aforesaid, shall be deemed fraudulent and void and of none effect, to all intents and purposes whatsoever.

The Loser of 10*l.* &c. at Cards, &c. may sue for the Money within 3 Months. See 4 Bur. 2018.

II. And be it further enacted by the authority aforesaid, That from and after the said first day of *May* one thousand seven hundred and eleven, any person or persons whatsoever who shall at any time or sitting, (8.) by playing at cards dice tables or other game or games whatsoever or by betting on the sides or hands of such as do play at any of the games aforesaid, lose to any one or more person or persons so playing or betting in the whole the sum or value of ten pounds, and shall pay or deliver the same or any part thereof, the person or persons so losing and paying or delivering the same (9.) shall be at liberty within three months then next to sue for and recover the money or goods so lost, and paid or delivered or any part thereof from the respective winner and winners (10.) thereof, with costs of suit by action of debt founded on this Act, (11.) to be prosecuted in any of Her Majesty's courts of record, in which actions or suits no essoin protection wager of law privilege of Parliament or more than one imparlance shall be allowed; in which action it shall be sufficient for the plaintiff to allege, that the defendant or defendants are indebted to the plaintiff or received to the plaintiff's use the monies so lost and paid or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action accrued to him according to the form of this statute, without setting forth the special matter; and in case the person or persons who shall lose such money or other thing as aforesaid, shall not within the time aforesaid really and *bona fide* and without covin or collusion sue and with effect prosecute for the money or other thing so by him or them lost and paid or delivered as aforesaid, it shall and may be lawful to and for any person or persons by any such action or suit as aforesaid to sue for and recover the same and treble the value thereof, with costs of suit, against such winner or winners as aforesaid; the one moiety thereof to the use of the person or persons that will sue for the same, and the other moiety to the use of the poor of the parish where the offence shall be committed (12.)

And if the Losers do not sue, &c. any other Person may;

and recover with treble Value; one Moiety to the Informer, the other to the Poor.

(8.) In Bower *v.* Booth, 2 Bl. Rep. 528, the Court held, that money won between Monday evening and Tuesday evening, the parties having been gaming without interruption, except for an hour when the parties were at dinner, without parting company, was won at one sitting. Per Blackstone, J.—To lose 10*l.* at one time is to lose it at a single stake or bet. To lose it at one sitting is to lose it in a course of play where the company never parts, though the person may not be actually gaming the whole time; and by Gould and Nares—The Statute, with respect to the party losing, is remedial, not penal—although (by Nares) it is penal, where the action is brought by a common informer:—so by Gould, with respect to a proceeding on that branch of the Act which inflicts pillory or other corporal punishment.

(9.) This right passes to the assignees under a Commission of Bankrupt.—Brandon *v.* Sands, 2 Ves. jun. 514—Brandon *v.* Pate, 2 H. B. 308.

(10.) To an action founded on the Statute, the defendant may plead in abatement, that the money was due from others as well as himself.—Bristow *v.* James, 7 T. R. 527.

(11.) In trover for a mare, lost upon a gaming contract, (the action being commenced after three months,) it was ruled, that the plaintiff was not entitled to recover, on account of the general invalidity of the contract; and by Heath, J.—There is no substantive clause in the Act, which avoids the contract; it only renders it liable to be defeated *sub modo*, for which purpose the plaintiff must bring his action in a limited time.—And in Thistlewood *v.* Crocroft, 1 M. & S. 502, it was held that money fairly lost at play could not be recovered back as paid without consideration, in an action for money had and received, not concluding *according to the form of the Statute.*

(12.) Semble, that in an action for the penalties given by the 9 Anne, c. 14. s. 2. a bill of discovery filed against the defendant for the purpose of a former action, on the former part of that section, for the money lost, may be given in evidence.—Thistlewood *v.* Crocroft, 1 Marsh 497. S. C. 6. Taunton 111, and see Billing *v.* Pulley. 2 Marsh 125, *n.*

No. V.
9 Anne, c. 14.

III. And for the better discovery of the monies or other thing so won and to be sued for and recovered as aforesaid it is hereby further enacted by the authority aforesaid, That all and every the person or persons who by virtue of this present Act shall or may be liable to be sued for the same shall be obliged and compellable to answer upon oath such bill or bills as shall be preferred against him or them for discovering the sum and sums of money, or other thing so won at play as aforesaid.

The Person sued shall answer upon Oath to discover the Money won

IV. Provided always, and be it nevertheless enacted by the authority aforesaid, That upon the discovery and repayment of the money or other thing so to be discovered and repaid as aforesaid, the person or persons who shall so discover and repay the same as aforesaid shall be acquitted indemnified and discharged from any further or other punishment forfeiture or penalty which he or they may have incurred by the playing for or winning such money or other thing so discovered and repaid as aforesaid; any former or other statute law or usage, or any thing in this present Act contained to the contrary thereof in any wise notwithstanding.

The Person who shall so discover and repay shall be indemnified from further Punishment.

V. And be it further enacted by the authority aforesaid, That if any person or persons whatsoever at any time or times after the said first day of *May*, one thousand seven hundred and eleven, do or shall by any fraud or shift cousenage circumvention deceit or unlawful device or ill practice whatsoever, in playing at or with cards dice or any the games aforesaid, or in or by bearing a share or part in the stakes wagers or adventures, or in or by betting on the sides or hands of such as do or shall play as aforesaid, win obtain or acquire to him or themselves or to any other or others any sum or sums of money or other valuable thing or things whatsoever, or shall at any one time or sitting win of any one or more person or persons whatsoever above the sum or value of ten pounds; that then every person or persons so winning by such ill practice as aforesaid, or winning at any one time or sitting above the said sum or value of ten pounds, and being convicted of any of the said offences upon an indictment or information to be exhibited against him or them for that purpose shall forfeit five times the value of the sum or sums of money, or other thing so won as aforesaid; and in case of such ill practice as aforesaid shall be deemed infamous and suffer such corporal punishment as in cases of wilful perjury; and such penalty to be recovered by such person or persons as shall sue for the same by such action as aforesaid.

Any Person winning by Fraud, &c. above 10*l.* at one Sitting, and convicted thereof on Indictment, &c. shall forfeit five Times the value, be deemed infamous, and suffer as in Cases of wilful Perjury.

'VI. And whereas divers lewd and dissolute persons live at great 'expences, having no visible estate profession or calling to maintain 'themselves but support those expences by gaming only;' Be it therefore further enacted by the authority aforesaid, That it shall and may be lawful for any two or more of her Majesty's justices of the peace in any county city or liberty whatsoever to cause to come or to be brought before them every such person or persons within their respective limits, whom they shall have just cause to suspect to have no visible estate profession or calling to maintain themselves by but do for the most part support themselves by gaming; and if such person or persons shall not make it appear to such justices that the principal part of his or their expences is not maintained by gaming, that then such justices shall require of him or them sufficient securities for his or their good behaviour for the space of twelve months; and in default of his or their finding such securities to commit him or them to the common gaol, there to remain until he or they shall find such securities as aforesaid.

Two Justices may cause Persons who have no visible Estate, &c. to be brought before them, and they shall find Sureties for their good behaviour, or be committed.

VII. And be it enacted by the authority aforesaid, That if such person or persons so finding sureties as aforesaid shall, during the time for which he or they shall be so bound to the good behaviour, at any one time or sitting play or bet for any sum or sums of money or other thing exceeding in the whole the sum or value of twenty shillings, that then such playing shall be deemed or taken to be a breach of his or their behaviour and a forfeiture of the recognizance given for the same.

Persons so finding Sureties and playing for 20*s.* forfeit Recognizance.

VIII. And for the preventing of such quarrels as shall and may hap-

Assaulting, &c. on Account of Money won at Play to forfeit all his Goods, and be imprisoned two Years.

No. V. 9 Anne, c. 14.

pen upon the account of gaming; be it further enacted by the authority aforesaid, That in case any person or persons whatsoever shall assault and beat, or shall challenge or provoke to fight any other person or persons whatsoever upon account (13.) of any money won by gaming playing or betting at any of the games aforesaid, such person or persons assaulting and beating or challenging or provoking to fight such other person or persons upon the account aforesaid shall, being thereof convicted upon an indictment or information to be exhibited against him or them for that purpose, forfeit to her Majesty her heirs and successors all his goods chattels and personal estate whatsoever, and shall also suffer imprisonment without bail or mainprize in the common gaol of the county where such conviction shall be had during the term of two years.

This Act shall not extend to prevent Gaming in any of the Queen's Palaces during her Residence there, &c.

IX. Provided always, That nothing in this Act contained shall extend to prevent or hinder any person or persons from gaming or playing at any of the games aforesaid, within any of her Majesty's palaces of *St. James* or *Whitehall*, during such time as her Majesty her heirs or successors shall be actually resident at either of the said two palaces, or in any other royal palaces, where her Majesty her heirs or successors shall be actually resident during the time of such actual residence, so as such playing be not in any house lodging or other part of any of the said palaces, the freehold or inheritance whereof is or shall be out of the crown, or is or shall be in lease to any person or persons during such time as such freehold and inheritance shall be out of the crown or such lease shall continue and so as such playing be for ready money only.

(13.) In Rex *v.* Randal, 1 East. P. C. 423. Buller, J. expressed an opinion, that judgment could only be given on this clause, in case the assault was committed at the time of play; but in Rex *v.* Darly, 4 East. 174. it was expressly ruled, that if the Jury find that the assault was *on account* of money won at play, the case is within the statute, although the assault was committed at a subsequent time, and at a different place, and after abusive language between the parties in respect of the money won—and judgment was given accordingly.

[No. VI.] 10 Anne, c. 26.—An Act for laying additional Duties on Hides and Skins, Vellum and Parchment, and new Duties on Starch, Coffee, Tea, Drugs, Gilt and Silver Wire, and Policies of Insurance, to secure a yearly Fund for Satisfaction of Orders to the Contributors of a further Sum of One Million Eight Hundred Thousand Pounds towards her Majesty's Supply; and for the better securing the Duties on Candles; and for obviating Doubts concerning certain Payments in *Scotland*; and for suppressing unlawful Lotteries, and other Devices of the same kind; and concerning Cake Sope; and for Relief of *Mary Ravenall*, in Relation to an Annuity of Eighteen Pounds *per Annum*; and concerning Prize Cocoa Nuts brought from *America*; and certain Tickets which were intended to be subscribed into the Stock of the *South Sea* Company; and for appropriating the Monies granted in this Session of Parliament.

[Inserted Part VI. Class XX. No. VI.]

[No. VII.] 8 George I. c. 2.—An Act for continuing the Duties on Malt, Mum, Cyder and Perry, to raise Money by way of a Lottery, for the Service of the Year One Thousand Seven Hundred and Twenty-two; and for transferring the Deficiencies of a late Malt

Act to the Land Tax for the said Year; and for giving Time for inserting the Money given with Apprentices in their Indentures; and touching lost Bills, Tickets or Orders; and for exchanging the Tickets in the Exchequer for Certificates; and for suppressing Lotteries denominated Sales, and other private Lotteries; and for enlarging the Time for the Accountant General of the Bank of *England* to return Duplicates of Annuities into the Exchequer. No. VII. 8 Geo. I. c. 2.

[Inserted Part VI. Class XX. No. VII.]

[No. VIII.] 9 George I. c. 19.—An Act to continue the Duties for Encouragement of the Coinage of Monies; and for Relief of *William* late Lord *Widdrington*; and to prevent Foreign Lotteries being carried on in this Kingdom; and for ascertaing the Duties on Bound Books imported; and for Issuing Certificates and Debentures for Arrears due to five Regiments, to be satisfied by Annuities therein-mentioned; and for discharging the Duties of Rock-Salt lost on the Rivers *Weaver* and *Mercy*; and for limiting the Times of Continuance of Commissioners for forfeited Estates in *England* and *Scotland* respectively; and for appropriating the Supplies granted to his Majesty in this Sessions of Parliament; and to rectify the Misnomers and Omissions of Commissioners for the Land Tax, in the Year One Thousand Seven Hundred and Twenty-three.

[Inserted Part VI. Class XX. No. VIII.]

[No. IX.] 2 George II. c. 28.—An Act to revive the Laws therein-mentioned, relating to the Importation of Foreign Brandy, and other Waters and Spirits; for Importation of Cochineal; to continue several Acts for preventing Frauds in the Customs; for Encouragement of the Silk Manufactures of this Kingdom; for making Copper Ore of the *British* Plantations an enumerated Commodity; for making perpetual an Act therein-mentioned, for suppressing of Piracy; for enabling Persons prosecuted upon the *Capias*, in relation to the running of Goods, to defend in *Forma Pauperis*; for more effectual debarring of unlawful Games; for Licensing Retailers of Brandy, and other distilled Liquors; and for better Regulation of Licences for common Inns and Alehouses.

[Inserted Part VI. Class XX. No. IX.]

[No. X.] 6 George II. c. 35.—An Act for appointing Commissioners to examine, state and report who of the Sufferers in the *Charitable Corporation* are Objects of

No. X. 6 Geo. II. c. 35.

Compassion, according to the Descriptions therein-mentioned; and for giving Relief to such Sufferers; and for enforcing the Laws made against Foreign Lotteries; and for impowering the said Commissioners to hear and determine the Claims of such Creditors and Proprietors of the said Corporation, as have not made their Claims within the Time limited by an Act made in the last Session of Parliament, *for taking, stating and determining all the Claims and Demands of the Creditors of the said Corporation, and of all Persons claiming any Share or Interest in the Stock or Fund of the said Corporation.*

[Inserted Part VI. Class XX. No. X.]

[No. XI.] 12 George II. c. 28.—An Act for the more effectual preventing of excessive and deceitful Gaming.

[Inserted Part VI. Class XX. No. XI.]

[No. XII.] 18 George II. c. 19.—An Act to restrain and prevent the excessive Increase of Horse Races, and for amending an Act made in the last Session of Parliament, intituled, *An Act for the more effectual preventing of excessive and deceitful Gaming.*

[Inserted Part VI. Class XX. No. XII.]

[No. XIII.] 18 George II. c. 34.—An Act to explain, amend, and make more effectual the Laws in being, to prevent excessive and deceitful Gaming, and to restrain and prevent the excessive Increase of Horse Races.

18 Geo. II. c. 34.

'WHEREAS notwithstanding the many good and wholesome laws 'now in being, for preventing excessive and deceitful gaming, 'many persons of ill fame and reputation who have no visible means of 'subsistence do keep houses rooms and other places for playing 'and do permit persons therein to play at cards dice and other devices 'for large sums of money, by means whereof divers young and unwary 'persons and others are drawn in to lose the greatest part and sometimes 'all their substance; and it frequently happens they are thereby reduced 'to the utmost necessities and betake themselves to the most wicked 'courses, which end in their utter ruin: And whereas a certain perni-'cious game called roulet or roly-poly is daily practised, and the laws 'now in being have by experience been found ineffectual to put a stop 'to such pernicious practices:' For remedy whereof, may it please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled,

No Person shall keep a place for playing Roly-poly, or other Game with Cards or Dice;

and by the authority of the same, That from and after the twenty-fourth day of *June* one thousand seven hundred and forty-five, no person or persons of what condition soever shall keep any house room or place for playing, or permit or suffer any person or persons whatsoever within any such house room or place to play at the said game of roulet, otherwise roly-poly, or at any other game with cards or dice already prohibited by the laws of this realm; and in case any person or persons whatsoever shall keep any such house room or place for playing, or permit or suffer

No. XIII. 18 Geo. II. c. 34.

any person or persons as aforesaid to play at the said game of roulet, otherwise roly-poly, or at any other game with cards or dice already prohibited by law, such person or persons so offending shall incur the pains and penalties and be liable to such prosecution as is directed in and by an Act made in the twelfth year of the reign of his present Majesty, intituled *An Act for the more effectual preventing excessive and deceitful Gaming.*

under Penalties of 12 G. 2. c. 28.

II. And be it further enacted by the authority aforesaid, That if any person or persons whatsoever shall after the said twenty-fourth day of *June* one thousand seven hundred and forty-five, play at the said game of roulet, otherwise roly-poly, or at any game or games with cards or dice already prohibited by law, every such person or persons so offending shall also incur the pains and penalties and be liable to such prosecution as is directed in and by an Act made in the twelfth year of the reign of his present Majesty, intituled *An Act for the more effectual preventing excessive and deceitful Gaming.*

Persons playing shall incur the Penalties of 12 Geo. II. c. 28.

III. 'And whereas in and by a certain statute made in the ninth year of the reign of her late Majesty Queen *Anne*, intituled *An Act for the better preventing excessive and deceitful Gaming*, it is (amongst other things) enacted, That from and after the first day of *May* one thousand seven hundred and eleven, any person or persons whatsoever who should at any time or sitting by playing at cards dice tables or other game or games whatsoever, or by betting on the sides or hands of such who do play at any of the games aforesaid lose to any one or more person or persons so playing or betting in the whole the sum of ten pounds and should pay and deliver the same or any part thereof, the person or persons so losing or paying or delivering the same should be at liberty within three months then next to sue for and recover the money or goods so lost and paid or delivered or any part thereof from the respective winner or winners thereof with costs of suit; to be sued for and recovered by action of debt founded on the said Act to be prosecuted in any of her then said Majesty's courts of record; in which actions or suits no essoin protection wager of law privilege of parliament or more than one imparlance should be allowed, with further directions as in the said Act are particularly set forth: And whereas for the better discovery of the monies or any thing so won and to be sued for as aforesaid, it is by the said statute enacted, That all and every person or persons who by virtue of the said statute should or might be liable to be sued for any such sum or sums of money or valuable things should be obliged and compelled to answer upon oath such bill or bills as should be preferred against him or them for the discovery of the sum or sums of money to be won at play as aforesaid; but no provision is made or authority given to any court of equity to decree the same to be paid;' Be it enacted by the authority aforesaid, That from and after the said twenty-fourth day of *June* one thousand seven hundred and forty-five, in case any bill or bills shall be brought exhibited and filed in any court of equity against any person or persons for any sum or sums of money won by any person or persons after the said twenty-fourth day of *June* one thousand seven hundred and forty-five, contrary to the true intent and meaning of the said Act, it shall and may be lawful for such court wherein such bill shall be brought exhibited and filed to proceed and decree thereupon and enforce such decree or decrees as shall be made in pursuance thereof in the same manner as is practised and used in other causes upon bills and answers depending in the courts where such bill shall be so brought and exhibited.

9 Anne, c. 14.

Court of Equity, where a Bill shall be filed for any Sum won, may enforce their Decree as in other Clauses.

IV. And for the more easy conviction of persons offending against this or any other former Act for preventing excessive and deceitful gaming; Be it enacted by the authority aforesaid, That it shall and may be lawful to and for such person or persons who have jurisdiction to hear and determine informations upon the statutes against excessive and deceitful gaming upon any information exhibited before them for any offence committed against this Act or against the statute made in the twelfth year of his present Majesty, intituled *An Act for the more effectual pre-*

On Information for any Offence against this Act, or 12 G. 2. c. 28.

No. XIII. 18 Geo. II. c. 34. or 13 Geo. 2. c. 19.

venting of excessive and deceitful Gaming; or against one other Act made in the thirteenth year of the reign of his present Majesty, intituled 'An 'Act to restrain and prevent the excessive Increase of Horse Races, and 'for amending an Act made in the last Session of Parliament;' intituled *An Act for the more effectual preventing excessive and deceitful Gaming;* to summon any person or persons other than the party accused to appear before them at a certain day time and place to be inserted in such summons and to give evidence for the discovery of the truth of the matter in the said information contained; and in case of neglect or refusal to appear, or if upon appearance such person or persons shall refuse to give evidence or shall give any false evidence, every such person or persons so offending shall forfeit and lose the sum of fifty pounds; to be levied by distress and sale of the offenders goods and chattels by warrant under the hands and seals of such persons issuing such sums as aforesaid; and in case such person or persons not appearing or neglecting or refusing to give such evidence or giving any false evidence shall not have sufficient goods and chattels whereon to levy the said sum of fifty pounds, every such person or persons shall be by such person or persons having jurisdiction as aforesaid committed to the common gaol for the county city or place where such offence shall be committed, there to remain for the space of six months without bail or mainprize.

Persons may be summoned to give Evidence, who, on neglect or refusal to appear, or giving false Evidence, shall forfeit 50*l.* or be committed for 6 Months.

No Person incapable of being a Witness (except the Parties) for having played, betted, &c.

V. And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* one thousand seven hundred and forty-five, no person or persons other than the parties plaintiff and defendant in the cause shall be incapacitated from being a witness touching any offence committed against the laws for preventing excessive and deceitful gaming by reason of having played betted or staked at any game prohibited by this or any of the said statutes.

Proviso for Royal Palaces,

VI. Provided also and it is hereby enacted and declared, That nothing in this Act contained shall extend to prevent or hinder any person or persons from playing at any game whatsoever, within any of his Majesty's royal palaces wherein his Majesty his heirs and sucessors shall then actually reside.

No Privilege of Parliament, &c.

VII. And be it further enacted by the authority aforesaid, That no privilege of Parliament shall be allowed to any person or persons whatsoever against whom any prosecution or proceedings shall be commenced or had for keeping of any publick or common gaming-house or any house room or place for playing at any game or games prohibited by this or any other Act now in being against excessive or deceitful gaming; any law usage or custom to the contrary in anywise notwithstanding.

Persons losing 10*l.* at one Time or 20*l.* in 24 Hours, may be indicted; and fined five times the Value.

VIII. And be it enacted by the authority aforesaid, That if any person after the commencement of this Act shall win or lose at play or by betting at any one time the sum or value of ten pounds, or within the space of twenty-four hours the sum or value of twenty pounds, such person shall be liable to be indicted for such offence within six months after it is committed, either before his Majesty's justices of the King's Bench, assize gaol delivery or grand sessions; and being thereof legally convicted, shall be fined five times the value of the sum so won or lost; which fine (after such charges as the court shall judge reasonable allowed to the prosecutors and evidence out of the same) shall go to the poor of the parish or place where such offence shall be committed.

Offenders discovering others discharged.

IX. Provided nevertheless, That if any person so offending shall discover any other person so offending so that such person be thereupon convicted, the person so discovering shall be discharged and indemnified from all penalties by reason of any such offence if such person so discovering hath not been before convicted thereof and shall be admitted as an evidence to prove the same.

9 Annæ, c. 14.

X. Provided always and it is hereby declared, That nothing in this Act contained shall extend or be construed to extend to repeal or invalidate an Act made in the ninth year of the reign of her late Majesty Queen *Anne*, intituled *An Act for the better preventing excessive and deceitful Gaming.*

No. XIII. 18 Geo. II. c. 34.

'XI. And whereas in an Act passed in the thirteenth year of his 'Majesty's reign, intituled *An Act to restrain and prevent the excessive In-* 'crease of Horse Races, *and for amending an Act made in the last Session of* 'Parliament, *intituled* An Act for the more effectual preventing of ex- 'cessive and deceitful gaming; it is (among other things) enacted, That 'from and after the twenty-fourth day of *June* one thousand seven hun- 'dred and forty, no horse mare or gelding being of the age of five years 'shall be entered started or run for any plate prize sum of money or 'other thing whatsoever, unless such horse mare or gelding shall carry 'ten stone weight computing fourteen pounds to each stone weight; and 'that no horse mare or gelding being of the age of six years shall be 'entered started or run for any plate prize sum of money or other thing 'whatsoever unless such horse mare or gelding shall carry eleven stone 'computing fourteen pounds to each stone weight; and that no horse 'mare or gelding being of the age of seven years shall be entered started 'or run for any plate prize sum of money or other thing whatsoever 'unless such horse mare or gelding shall carry twelve stone weight com- 'puting fourteen pounds to each stone weight; and in case any person 'or persons shall enter start or run any horse mare or gelding of either 'of the ages aforesaid for any plate prize sum of money or other thing 'carrying less than the weights herein before directed to be carried, such 'horse mare or gelding or the value thereof shall be forfeited; and the 'person or persons so entering starting or running such horse mare 'or gelding shall forfeit and lose the sum of two hundred pounds: 'And whereas the thirteen royal plates of one hundred guineas each 'annually run for, as also the high prices that are constantly given for 'horses of strength and size are sufficient to encourage breeders to raise 'their cattle to the utmost size and strength possible;' Be it therefore enacted by the authority aforesaid, That it shall and may be lawful for any person or persons from and after the twenty-fourth day of *June* one thousand seven hundred and forty-five, to run any match or to start and run for any plate prize sum of money or other thing of the real and intrinsic value of fifty pounds or upwards at any weights whatsoever and at any place or places whatsoever without incurring or being liable to the penalty or penalties in the said Act of the thirteenth year of his Majesty's reign relating to weights as aforementioned and in the same manner as might have been done if the said Act had never been made; any thing herein contained to the contrary notwithstanding.

13 G. 2. c. 19. sec. 3.

Repealed.

[No. XIV.] 27 George III. c. 1.—An Act to render more effectual the Laws now in being for suppressing unlawful Lotteries.

Inserted Part VI. Class XX. No. XV.]

[No. XV.] 34 George III. c. 40.—An Act for granting to his Majesty a certain Sum of Money, to be raised by a Lottery.

[Inserted Part VI. Class XX. No. XVI.]

[No. XVI.] 42 George III. c. 119.—An Act to suppress certain Games and Lotteries not authorized by Law.

[Inserted Part VI. Class XX. No. XVII.]

PART III.

CLASS VIII.

Stock Jobbing.

[No. I.] 7 George II. c. 8.—An Act to prevent the infamous Practice of Stock Jobbing.

7 Geo. II. c. 8. See 4 Bur. 2069.

'WHEREAS (1.) great inconveniences have arisen and do daily arise by the wicked pernicious and destructive practice of stock jobbing whereby many of his Majesty's good subjects have been and are diverted from pursuing and exercising their lawful trades and vocations to the utter ruin of themselves and families to the great discouragement of industry and to the manifest detriment of trade and commerce;' For remedy thereof, may it please your most excellent Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That all contracts and agreements whatsoever which shall from and after the first day of *June* one thousand seven hundred and thirty-four, be made or entered into by or between any person or persons whatsoever upon which any premium or consideration in the nature of a premium shall be given or paid for liberty to put upon or to deliver receive accept or refuse any publick or joint stock or other publick securities (2.) whatsoever or any part share or interest therein, and also all wagers and contracts in the nature of wagers and all contracts in the nature of putts and refusals relating to the then present or future price or value of any such stock or securities as aforesaid shall be null and void to all intents and purposes whatsoever (3) and all premiums sum or sums of money whatsoever which shall be given received paid or delivered upon all such contracts or agreements or upon any such wagers or contracts in the nature of wagers as aforesaid shall be restored and repaid to the person or persons who shall give pay or deliver the same,

All Contracts made for Liberty to put upon, accept or refuse any Publick Stocks or Securities, and Wagers, &c. shall be void, &c.

(1.) This statute is a remedial rather than a penal Act. Billing *v.* Flight, 6 Taunt. 419. S. C. 2 Marsh 124.

(2.) Omnium is a stock within the Act—Brown *v.* Turner, 7 T. R. 630.

(3.) The Statute does not extend to a contract on the loan or transfer of stock to replace the same amount on a future day—Saunders *v.* Kentish, 8 T. R. 162.—A broker contracting in his own name for the sale of stock which he was authorised to sell, and having, upon default of his principal, paid the difference between the price and the value at the time when the transfer was to be made, cannot maintain an action against the principal for money paid to his use, the plaintiff not having been bound as guarantee for the transfer of the stock.—Child *v.* Manby, 8 T. R. 610. —In Faikney *v.* Reous, 4 Bur. 2069, the plaintiff and defendant having been engaged in partnership in illegal stock transactions, the plaintiff paid 3000*l.* for compounding the difference, and the defendant gave him a bond for a moiety of the money, which was holden good. And in Petrie *v.* Hannay, 3 T. R. 418, one party in a similar transaction having paid the difference with the privity and consent of the other, who accepted a bill for the amount, was allowed to recover. Conformable however as these decisions are to the manifest principles of justice, they have not been allowed to maintain their authority, and cannot by any subtlety of reasoning be reconciled with the subsequent cases of Leshby *v.* Steers, 6 T. R. 61—Brown *v.* Turner, 7 T. R. 630, which were decided in a much more summary manner than the magnitude and importance of the question required. But the King's Bench had then lost the powerful aid of a Buller.—The principles of these respective cases still continue the subject of judicial controversy. The majority of opinions will probably be found in favour of the doctrine which has always appeared to me to be as uncalled for by the rules of law as it is confessedly repugnant to the principles of justice.—See the subject more fully discussed in the Appendix, No. 1, and see class 3, No. 3, note 1, supra.

No. I.
7 Geo. II.
c. 8.

who shall be at liberty within six months from and after the making such contract or agreement or laying any such wager to sue for and recover the same from the person or persons to whom the same is or shall be paid or delivered with double costs of suit by action of debt founded on this Act, to be prosecuted in any of his Majesty's courts of record, in which action no essoin protection wager of law or more than one imparlance shall be allowed; and it shall be sufficient therein for the plaintiff to allege that the defendant is indebted to the plaintiff or has received to the plaintiff's use the money or premium so paid or received whereby the plaintiff's action accrued to him according to the form of this statute without setting forth the special matter.

II. And for the better discovery of the monies or premium which shall be given paid or delivered and to be sued for and recovered as aforesaid; It is hereby further enacted by the authority aforesaid, That all and every the person or persons who by virtue of this present Act shall or may be liable to be sued for the same shall be obliged (4.) and compellable to answer upon oath such bill as shall be preferred against him or them in any court of equity for discovering any such contract or wager and the sum of money or premium so given paid or delivered as aforesaid (5.)

Persons sued on this Act obliged to Answer on Oath.

III. Provided always, That the plaintiffs relators or informers in such bill shall and do (at the time of bringing or filing such bill) give good and sufficient security to answer and pay the defendants in such bill full costs of suit in case such costs shall be adjudged to the defendants and that no person shall be obliged to appear or to answer such bill until such security is given.

Security for Costs.

IV. And be it further enacted by the authority aforesaid, That all and every person or persons whatsoever who shall enter into make or execute any such contract bargain or agreement upon which any premium or consideration in the nature of a premium shall be given or paid for liberty to put upon or to deliver receive accept or refuse any publick or joint stock or other publick securities whatsoever, or any part share or interest therein, or any contract or bargain in the nature of putts and refusals as aforesaid, or shall lay any such wager or make any such contract in the nature of a wager as aforesaid (except such person or persons who shall actually and *bona fide* without covin or collusion sue and with effect prosecute for the recovery of the money or premium given delivered or paid by him her or them as aforesaid; and also except such person or persons who shall voluntarily before any action or suit commenced actually and *bona fide* without covin or collusion repay or tender before one or more witness or witnesses such monies or premium as he she or they shall have had taken received or been paid as aforesaid; and also except such persons who shall discover such transactions in any court of equity) (6.) shall forfeit and pay the sum of five hundred pounds; and also all and every brokers agents scriveners or other persons negotiating transacting or writing any such contract bargain or agreement as aforesaid shall likewise forfeit and pay the sum of five hundred pounds; which said penalties shall and may be recovered by action of debt (7.) bill plaint or information in any of his Majesty's courts of record at *Westminster*, in which no essoin privilege protection or wager of law or more than one imparlance shall be allowed; one moiety thereof to the use of his Majesty his heirs and successors, and the other moiety thereof to the use of him her or them who shall sue for the same.

500*l.* Penalty on making or executing any such Putts or Bargains.

Exceptions

(4.) It is no ground for refusing to answer a bill of discovery, filed in pursuance of 7 Geo. II. c. 8. s. 2. that the plaintiff has declared in assumpsit instead of debt. Billing *v.* Pulley, 2 Marsh 125, *n.* S. C. 6 Taunt. 422.

(5.) See the next note.

(6.) The protection hereby given to persons making discovery relates only to the penalties imposed in this section upon Acts prohibited by Section 1, and a defendant is not compellable under Section 2 to answer to matters which may subject him to penalties under Sections 5 and 8.—Bullock *v.* Richardson, 11 Vesey, 373.

(7.) In an action for money lost by stock jobbing, under 7 Geo. II. c. 8. the plaintiff declared in assumpsit instead of debt. The Court of C. P. amended the declaration by changing it from assumpsit to debt. Billing *v.* Flight.—2 Marsh 124. 6 Taunt. 419.

No. I.
7 Geo. II.
c. 8.

100*l.* Penalty on giving or receiving Money to compound Differences relating to Stock not actually delivered.

V. And for preventing the evil practice of compounding or making up differences for stocks or other securities bought sold or at any time hereafter to be agreed so to be, Be it further enacted by the authority aforesaid, That no money or other consideration whatsoever (except as hereinafter is provided) shall from and after the said first day of *June* one thousand seven hundred and thirty-four, be voluntarily given paid had or received for the compounding satisfying or making up any difference for the not delivering transferring having or receiving any publick or joint stock or other public securities, or for the not performing of any contract or agreement so stipulated and agreed to be performed; but that all and every such contract and agreement shall be specifically performed and executed on all sides, and the stock or security thereby agreed to be assigned transferred or delivered shall be actually so done and the money or other consideration thereby agreed to be given and paid for the same shall also be actually and really given and paid; and all and every person and persons whatsoever who shall from and after the said first day of *June* one thousand seven hundred and thirty-four, voluntarily compound make up pay satisfy take or receive such difference money or other consideration whatsoever for the not delivering transferring assigning having or receiving such stock or other security so to be agreed to be delivered transferred assigned had or received as aforesaid (except in the manner hereinafter provided) shall forfeit and pay the sum of one hundred pounds to be recovered by action of debt bill plaint or information in any of his Majesty's courts of record at *Westminster* in which no essoin privilege protection or wager of law or more than one imparlance shall be allowed; one moiety thereof to the use of his Majesty his heirs and successors, and the other moiety thereof to the use of him her or them who shall sue for the same.

Stock sold, and not paid for at the Time prefixed, may be sold to any other Persons.

VI. Provided nevertheless, That no person or persons who shall sell any publick or joint stock or other publick securities to be delivered and paid for on a certain day and which shall be refused or neglected to be paid for according to such agreement shall be obliged to transfer the same; but it shall and may be lawful for such person or persons to sell (8.) such stock or other securities which shall be so refused or neglected to be paid for to any other person or persons for the best price which can be obtained; and after such sale to receive (if the parties can agree) or to recover as aforesaid from the person or persons who first contracted for the same all the damage which shall be sustained thereby.

Stock bought, and not transferred at the Time prefixed, the Buyer may purchase other Stock and recover his Damage.

VII. And provided also, That it shall and may be lawful to and for any person or persons who shall buy any publick or joint stock or other publick securities to be accepted and paid for on a future day and which shall be refused or neglected to be transferred to buy the like quantity of such stock or other publick securities of any other person or persons at the current market price, and to recover and receive after such purchase and acceptance (if the parties can agree) from the person or persons who first contracted to sell or deliver the same the damage which shall be sustained by reason of the not delivering or not transferring such stock or other securities; any thing in this Act or any law usage or custom to the contrary notwithstanding.

500*l.* Penalty on buying or selling Stock, of which they are not actually possessed at the Time of the Contract.

VIII. 'And whereas it is a frequent and mischievous practice for persons to sell and dispose of stocks or other securities of which they are not possessed;' Be it therefore further enacted by the authority aforesaid, That all contracts and agreements whatsoever which shall from and after the said first day of *June* one thousand seven hundred and thirty-four, be made or entered into for the buying selling assigning or transferring of any publick or joint stock or stocks or other publick securities whatsoever or of any part share or interest therein whereof the person or persons contracting or agreeing or on whose behalf the contract or agreement shall be made, to sell assign and transfer the same shall not at the

(8.) No action can be maintained upon this section, unless the stock is actually transferred.—A contract of sale at the time when the transfer books are shut is not sufficient.—Herkscher v. Gregory, 4 East. 607.

No. I. 7 Geo. II. c. 8.

time of making such contract or agreement be actually possessed of or intituled unto in his her or their own right or in his her or their own name or names, or in the name or names of a trustee or trustees to their use shall be null and void to all intents and purposes whatsoever; and all and every person and persons whatsoever contracting or agreeing or on whose behalf and with whose consent any contract or agreement shall be made, to sell assign or transfer any publick or joint stock or stocks or other publick securities whereof such person or persons shall not at the time of making such contract or agreement be actually possessed of or entitled unto in his her or their own name or names or in the name or names of a trustee or trustees to their use or their own right as aforesaid shall forfeit and pay the sum of five hundred pounds to be recovered by action of debt bill plaint or information in any of his Majesty's courts of record at *Westminster* in which no essoin privilege protection or wager of law or more than one imparlance shall be allowed; one moiety thereof to the use of his Majesty his heirs and successors, and the other moiety thereof to the use of him her or them who shall sue for the same; and all and every broker or brokers agent or agents who shall negociate transact or intermeddle in the making or procuring to be made any such contract or agreement as aforesaid and shall know that the person or persons by whom or on whose behalf such contract or agreement shall be made is or are not possessed of or entitled unto the stock or security concerning which such contract or agreement shall be made in his her or their own name or names or in the name or names of a trustee or trustees for their use or right shall for every such offence forfeit and pay the sum of one hundred pounds to be recovered by action of debt bill plaint or information in any of his Majesty's courts of record at *Westminster* in which no essoin privilege protection or wager of law or more than one imparlance shall be allowed; one moiety thereof to the use of his Majesty his heirs and successors, and the other moiety thereof to the use of him her or them who shall sue for the same.

100*l.* Penalty on Brokers negotiating such Contract.

IX. And be it further enacted by the authority aforesaid, That from and after the said first day of *June* one thousand seven hundred and thirty-four, all and every broker or brokers or other person or persons who shall negociate or act as a broker receiving brokerage in the buying selling or otherwise disposing of any of the said publick or joint stocks or other publick securities, shall respectively keep a book or register which shall be called *The Brokers Book*; in which said book he and they shall fairly justly and truly enter all contracts agreements and bargains, that he or they shall from time to time make between any person or persons whatsoever on the day of the making such contract or agreement, together with the names of the principal parties as well buyers as sellers and also the day of making such contract or agreement, to the intent and purpose that such broker or brokers and other person or persons acting or negociating as such as aforesaid, shall from time to time produce such book or register when thereunto lawfully required: And in case such broker or brokers or any other who shall negotiate or act as a broker as aforesaid in relation to any the said matters, shall not keep such book or register or who shall wilfully omit to enter therein fairly justly and truly any such contract bargain and agreement as aforesaid, he or they shall for every such offence or omission forfeit and pay the sum of fifty pounds, to be recovered by action of debt bill plaint or information in any of his Majesty's courts of record at *Westminster*, in which no essoin privilege protection or wager of law or more than one imparlance shall be allowed; one moiety thereof to the use of his Majesty his heirs and successors and other moiety thereof to the use of him her or them who shall sue for the same.

All Contracts for stock to be truly entered in the Brokers Book,

on Penalty of 50*l.* for each Offence.

X. Provided always, That nothing in this Act contained shall extend or be construed to extend to any contracts or agreements for the purchase or sale of any stock annuities or other publick securities to be made with the privity of the accountant general of the Court of *Chancery*, in pursuance of any decree or order of the said Court; but that all such con-

Accountant of the Chancery may be as before.

No. I.
7 Geo. II.
c. 8.

tracts and agreements may be made and performed in the same manner as they might have been if this Act had never been made.

This Act not to hinder Persons from lending Money on Public Stocks, or prevent the re-delivering thereof, on Repayment of the Money lent.

XI. Provided also, and be it further enacted by the authority aforesaid, That nothing in this Act contained shall extend or be construed to extend to hinder or prevent any person or persons from lending any sum or sums of money on any public or joint stock or other public securities whatsoever or any part share or interest therein, or to prevent or hinder any defeazance contract or agreement being made and entered into for the re-delivering assigning or transferring such publick or joint stock or other publick securities or any part share or interest therein, upon the repayment of the sum or sums of money which shall have been lent and borrowed thereupon, with interest for the same, so as no premium or other consideration whatsoever be paid to or received by the person or persons lending such money for or in consideration of such loan more than legal interest.

This Act to be in Force from 1st June 1731, for 3 Years.

XII. Provided also, and be it further enacted by the authority aforesaid, That this present Act shall continue and be in force from the said first day of *June* one thousand seven hundred and thirty-four, for the term of three years and from thence to the end of the then next session of Parliament and no longer.

'Made perpetual by 10 Geo. II. c. 8.'

PART III.

CLASS IX.

Sale of Offices.

[No. I.] 12 Richard II. c. 2.—None shall obtain Offices by Suit, or for Reward, but upon Desert.*

'ITEM it is accorded, That the chancellor treasurer keeper of the privy seal steward of the King's house the King's chamberlain clerk of the rolls the justices of the one bench and of the other barons of the Exchequer and all other that shall be called to ordain name or make justices of peace sheriffs escheators customers comptrollers or any other officer or minister of the King, shall be firmly sworn that they shall not ordain name or make justice of peace sheriff escheator customer comptroller nor other officer or minister of the King for any gift or brocage favour or affection; (2.) nor that none which pursueth by him or by other privily or openly to be in any manner office, shall be put in the same office or in any other; (2.) but that they make all such officers and ministers of the best and most lawful men, and sufficient to their estimation and knowledge.' 12 Rich. II. c. 2.

* Lord Coke speaks of this as a law worthy to be written in letters of gold—but more worthy to be put in due execution; for certainly never shall justice be duly administered but when the officers and ministers of justice be of such quality, and come to their places in such manner, as by this law is required.—1 Inst. 234.

[No. II.] 5 & 6 Edward VI. c. 16.—Against Buying and Selling of Offices.

'FOR the avoiding of corruption which may hereafter happen to be in the officers and ministers in those courts places or rooms, wherein there is requisite to be had the true administration of justice or services of trust; And to the intent that persons worthy and meet to be advanced to the place where justice is to be ministred or any service of trust executed, should hereafter be preferred to the same and no other:' 5 & 6 Ed. VI. c. 16. The Penalty for buying or selling some sort of Offices.

II. Be it therefore enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, and by the authority of the same, That if any person or persons at any time hereafter bargain or sell (1.) any office or offices or deputation of any office or offices or any part or parcel of any of them, or receive have or take any money fee reward or any other profit directly or indirectly, or take any promise agreement covenant bond or any assurance to receive or have any money fee reward or other profit (2.) directly

(1.) A contract for A. to surrender an office to the intent that B. may be appointed, is within the Act.—Co. Lit. 234. 3 Inst. 154. by the name of Sir Arthur Ingram's case.

(2.) A bond from a deputy to a principal to pay him half the profits of the office, is not within the statute; nor a lesser sum, part of a sum certain; nor a sum out of the fees;—but an agreement generally to pay a sum certain, when the profits are uncertain, is void—Culleford *v.* De Cardonell, 2 Salk. 466—Amb. 356. Godolphin *v.* Tudor, 2 Salk. 251—although it appear on the record that the profits received exceed the sum stipulated to be paid—S. C. 6 Mod. 324. Willes 375. *n.*—Lockner *v.* Strode, 2 Ch. Cas. 38. which seems certain is misreported—See 2 H. B. 332. The

No. II.
5 & 6 Edw. VI. c. 16.

Hob. 75.
Cro. Jac. 266.

or indirectly for any office or offices, or for the deputation of any office or offices or any part of any of them; or to the intent that any person should have exercise or enjoy any office or offices or the deputation of any office or offices or any part of any of them; which office or offices or any part or parcel of them shall in any wise touch or concern the administration or execution of justice (3.) or the receipt controlment or payment of any of the King's Highness treasure money rent revenue account aulnage auditorship or surveying of any of the King's Majesty's honours castles manors lands tenements woods or hereditaments; or any of the King's Majesty's customs or any other administration or necessary attendance to be had done or executed in any of the King's Majesty's custom house or houses; or the keeping of any of the King's Majesty's towns castles or fortresses, being used occupied or appointed for a place of strength and defence; or which shall concern or touch any clerkship to be occupied in any manner of court of record, (4.) wherein justice is to be ministred: (5.) That then all and every such person and persons that shall so bargain or sell any of the said office or offices deputation or deputations, or that shall take any money fee reward or profit for any of the said office or offices deputation or deputations of any of the said offices or any part of any of them, or that shall take any promise covenant bond or assurance for any money reward or profit, to be given for any of the said office or offices deputation or deputations of any of the said office or offices or any part of any of them, shall not only lose and forfeit (6.) all his and their right interest and estate which such person or persons shall then have, of in or to any of the said office or offices deputation

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same distinction, as to a certain profit, and a profit out of the fees of the office, was allowed by Lord Nottingham, in Juxton *v.* Norris—cited 1 H. B. 332—misreported 2 Ch. 42.—A bond to account for all the profits to the person appointing, is void within the Act—Layng *v.* Paine, Willes, 571—or to resign on request.—S. C. So an agreement to pay all the profits to the person by whose interest the affidavit was proved.—Garforth *v.* Fearon, 1 H. B. 327.—A demise of part of the profits of an office, such as the goods of felons, to a person appointed deputy, rendering a certain rent, is within the Act—semble Ellis *v.* Ruddle, 2 Lev. 151—which went off on a collateral ground. In Law *v.* Law, Temp. Talb. 140, an injunction was granted against a bond for procuring an office in the Customs, the Lord Chancellor saying, that here was little difference between a commissioner's taking a sum of money, and another person taking it to influence the commissioner.—So Garforth *v.* Fearne. *ub. sup.*

(3.) The Act extends to offices of spiritual courts, as chancellor, register, and commissary—Dr. Tudor's case—Cro. Jac. 269. S. C. by the name of Robotham *v.* Tudor, Brownl. 11—Surrogate, Juxton *v.* Morris, 2 Ch. Cas. 42—Archdeacon, Register, Woodward *v.* Fox, 3 Lev. 289—Layng *v.* Paine, Willis, 571.——The office of clerk of the fines to a justice in Wales—Per Co. Walter *v.* Walter, Gowr. 6. 180.—The place of gaoler—Stockwell *v.* North, Mo. 781—of undersheriff—semble 1 Browning *v.* Hulford, Freem. 19—(which went off on a point of pleading)—but this is expressly provided for by Stat. 3 Geo. I. c. 15. (with the exceptions of the sheriff of London,) and the stewardship of a court leet—Williamson *v.* Barnsley, Brownlow, 70—not a bailiff of a hundred, 4 Leon. 33.

(4.) The office of clerk of the peace would seem to be clearly designated by this description; but a particular provision is made against the sale of that office, by Stat. W. & M. Sess. 1. c. 21. with a proviso, that the Act should not extend to the clerk of the peace for the county of Lancaster, who holds his office for lives.

(5.) As to offices not within the Act, and the cases in which they may or may not be sold, or in which contracts for their resignation are or not valid, as depending upon such contracts being allowed by the authority of the proper officers of government or otherwise, see Parsons *v.* Thompson, 115 B. 322, and the authorities therein cited. —See also Blatchford *v.* Preston 8 T. R. in which a contract for the sale of the command of an East India ship, contrary to the bye-laws of the Company, was ruled to be void. As to officers in the plantations as effected by this Act,—See Blanchard *v.* Goldy, 2 Salk. 411, Dawes *v.* Pinder, or Painter, 2 Mod. 45, 3 Keble, 26.—Rex *v.* Vaughan, 4 Bur—but those officers are expressly provided for in the next number. As to the offence of an officer of state taking a bribe, as of offering a bribe for an appointment to an office.—See Rex *v.* Vaughan *ub. sup.* A person was convicted and imprisoned for such an offer to Mr. Addington when prime minister.

(6.) In Woodward *v.* Fox, 2 Ventr. 187. 267. an Archdeacon sold the office of register to a person who held for his life; and upon his death, appointments were made by the Archdeacon who had committed the forfeiture, and the Bishop, and upon an action of assumpsit to try the right to the office, it was held that the forfeiture accrued to the benefit of the King, and not to the Bishop; and, that the King having made no appointment, the appointment by the Archdeacon was good. The Court seemed to think that the King might appoint without offence found.

or deputations or any part of any of them, or of in or to the gift or nomination of any of the said office or offices deputation or deputations, for the which office or offices or for the deputation or deputations of which office or offices or for any part of any of them, any such person or persons shall so make any bargain or sale or take or receive any sum of money fee reward or profit, or any promise covenant or assurance to have or receive any fee reward money or profit: But also that all and every such person or persons that shall give or pay any sum of money reward or fee, or shall make any promise agreement bond or assurance for any of the said offices, or for the deputation or deputations of any of the said office or offices or any part of any of them, shall immediately by and upon the same fee money or reward given or paid, or upon any such promise covenant bond or agreement had or made for any fee sum of money or reward to be paid as is aforesaid, be adjudged a disabled person (7.) in the law to all intents and purposes, to have occupy or enjoy the said office or offices deputation or deputations or any part of any of them, for the which such person or persons shall so give or pay any sum of money fee or reward, or make any promise covenant bond or other assurance to give or pay any sum of money fee or reward.

III. And be it also enacted by the authority aforesaid, That all and every such bargains sales promises bonds agreements covenants and assurances as be before specified, shall be void to and against him and them by whom any such bargain sale bond promise covenant or assurance shall be had or made. (8.) The Bargains and Assurances shall be void. Cro. El. 529. Stiles 29.

IV. Provided alway, That this Act or any thing therein contained, shall not in any wise extend to any office or offices, whereof any person or persons is or shall be seised of any estate of inheritance; (9.) nor to any office of parkership or of the keeping of any park house manor garden chase or forest or to any of them; any thing in this Act heretofore mentioned to the contrary thereof in any wise notwithstanding. To what Offices this Statute shall not extend.

V. Provided also, That if any person or persons do hereafter offend in any thing contrary to the tenor and effect of this Act, yet that notwithstanding all judgments given and all other Act and Acts executed or done by any such person or persons so offending by authority or colour of the office or deputation which ought to be forfeited or not occupied or not enjoyed by the person so offending as is aforesaid, after the said offence so by such person committed or done, and before such person so offending for the same offence be removed from the exercise administration and occupation of the said office or deputation, shall be and remain good and sufficient in law to all intents constructions and purposes, in such like manner and form as the same should or ought to have remained and been if this Act had never been had or made. Acts done by an Officer removable shall be good.

VI. Provided also, That this Act or any thing therein contained shall not in any wise extend to any bargain sale gift grant nomination bond covenant promise agreement or assurance whatsoever it be, of or for any the office or offices deputation or deputations aforesaid, or any part of any of them, had made done concluded or agreed before the first day of *March* next coming, but that the same bargain sale gift grant nomination bond covenant promise agreement or assurance had made done concluded or agreed before the said first day of *March*, shall always remain continue and be in such force strength and effect as if this Act had never been had or made; any thing before in this Act mentioned to the contrary thereof in any wise notwithstanding. A Bargain for an Office before the first Day of March, &c.

VII. Provided always, and be it enacted by the authority aforesaid, That Offices given by the two Chief Justices or Justices of Assize.

(7.) The disability continues for life, and the King has no power to dispense with it.—Sir Arthur Ingram's case, 3 Inst. 154, Co. Lit. 234.

(8.) An obligation for the performance of a contract, void by the statute, and for another thing, is void for the whole.—Smyth *v.* Colshill, Anders, 55, S. C. by the name of Lee *v.* Coleshill, Cro. Eliz. 529. As to an action of covenant lying upon such covenants as are good, *vi.* S. C. 1 Anders, 107.

(9.) The bailiwick of the Savoy being an office of inheritance in the Crown, granted for life or years, and demised to a sublessee, is not within the statute.—Ellis *v.* Ruddle, 2 Lev. 151. Nelson's case, Freem. 428.

No. II. 5 & 6 Edw. VI. c. 16.

this Act, or any thing therein contained, shall not any wise extend or be prejudicial or hurtful to any of the chief justices of the King's courts commonly called the King's Bench or Common Place, or to any of the justices of assize that now be or hereafter shall be, but that they and every of them may do in every behalf touching or concerning any office or offices to be given or granted by them or any of them as they or any of them might have done before the making of this Act; any thing above mentioned to the contrary in any wise notwithstanding.

[No. III.] 49 George III. c. 126.—An Act for the further Prevention of the Sale and Brokerage of Offices.—[20*th June* 1809.]

49 Geo. III. c. 126.

Recital of st. 5 & 6 Ed. 6. c. 16.

'WHEREAS an Act passed in the fifth and sixth year of the reign of King *Edward* the Sixth, intituled, *Against buying and selling of Offices*: And whereas it was in and by the said Act enacted, amongst other things, that if any person or persons at any time thereafter bargained or sold any office or offices or deputation of any office or offices or any part or parcel of any of them, or received had or took any money fee reward or any other profit directly or indirectly, or took any promise agreement covenant bond or any assurance to receive or have any money fee reward or other profit directly or indirectly for any office or offices, or for the deputation of any office or offices or any part of any of them, or to the intent that any person should have exercise or enjoy any office or offices or the deputation of any office or offices or any part of any of them, which office or offices or any part or parcel of them, should in anywise touch or concern the administration or execution of justice or the receipt controlment or payment of any of the King's highness treasure money rent revenue account aulnage auditorship, or surveying of any of the King's Majesty's honours castles manors lands tenements woods or hereditaments, or any of the King's Majesty's customs, or any other admini-tration or necessary attendance to be had done or executed in any of the King's Majesty's custom house or houses, or the keeping of any of the King's Majesty's towns castles or fortresses being used occupied or appointed for places of strength and defence, or which should concern or touch any clerkship to be occupied in any manner of court of record wherein justice was to be administered, that then all and every such person and persons that should so bargain or sell any of the office or offices deputation or deputations, or that should take any money fee reward or profit for any of the said office or offices deputation or deputations of any of the said offices or any part of any of them, or that should take any promise covenant bond or assurance for any money reward or profit to be given for any of the said office or offices deputation or deputations of any of the said office or offices; or any part of any of them, should not only lose and forfeit all his and their right interest and estate which such person or persons should then have of in or to any of the said office or offices deputation or deputations or any part of any of them, or of in or to the gift or nomination of any of the said office or offices deputation or deputations for the which office or offices, or for the deputation or deputations of which offices or for any part of any of them, any such person or persons should so make any bargain or sale, or take or receive any sum of money fee reward or profit, or any promise covenant or assurance to have or receive any fee reward money or profit, but also that all and every such person or persons that should give or pay any sum of money reward or fee, or should make any promise agreement bond or assurance for any of the said offices, or for the deputation or deputations of any of the said office or offices, or any part of any of them, should immediately by and upon the same fee money or reward given or paid, or upon any such promise covenant bond or agreement had or made for any fee sum of money or reward to be paid as is aforesaid, be adjudged a disabled per-

'son in the law to all intents and purposes to have occupy or enjoy the 'said office or offices deputation or deputations, or any part of any of 'them, for the which such person or persons should so give or pay any 'sum of money fee or reward, or make any promise covenant bond or 'other assurance to give or pay any sum of money fee or reward; and 'that all and every such bargains sales promises bonds agreements 'covenants and assurances as before specified should be void to and 'against him and them by whom any such bargain sale bond promise 'covenant or assurance should be had or made: And whereas it was in 'the said Act provided, that the said Act, or any thing therein con-'tained, should not in anywise extend to any office or offices whereof 'any person or persons was or should be seised of any estate of inherit-'ance, nor to any office of parkership or of the keeping of any park house 'manor garden chase or forest, or to any of them: And whereas it was 'by the said Act further provided, that if any person or persons did there-'after offend in any thing contrary to the tenor and effect of the said Act, 'yet that notwithstanding all judgments given, and all other Act and 'Acts executed or done by any such person or persons so offending by 'authority or colour of the office or deputation which ought to be for-'feited or not occupied or not enjoyed by the person so offending, after 'the said offence so by such person committed or done, and before such 'person so offending for the same offence should be removed from the 'exercise administration and occupation of the said office or deputation 'should be and remain good and sufficient in law to all intents construc-'tions and purposes in such like manner and form as the same would or 'ought to have remained and been if this Act had never been had or 'made: And whereas it was by the said Act further provided, that the 'said Act, or any thing therein contained, should not in anywise extend 'or be prejudicial or hurtful to any of the chief justices of the King's 'courts, commonly called the King's Bench or Common Place, or to any 'of the justices of assize that then were or thereafter should be, but that 'they and every of them might do in every behalf touching or concerning 'any office or offices to be given or granted by them or any of them as they 'or any of them might have done before the making of the said Act:' Be it therefore declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act the said Act and all the provisions therein contained shall extend and be construed to extend to *Scotland* and *Ireland*, and to all offices in the gift of the crown, or of any office appointed by the crown, and all commissions civil naval or military and to all places and employments, and to all deputations to any such offices commissions places or employments in the respective departments or offices, or under the appointment or superintendance and controul of the lord high treasurer or commissioners of the treasury the secretary of state the lords commissioners for executing the office of lord high admiral the master general and principal officers of his Majesty's ordinance the commander in chief the secretary at war the paymaster general of his Majesty's forces the commissioners for the affairs of *India* the commissioners of the excise the treasurer of the navy the commissioners of the navy the commissioners for victualling the commissioners of transports the commissary general the storekeeper general and also the principal officers of any other publick department or office of his Majesty's government in any part of the United Kingdom, or in any of his Majesty's dominions colonies or plantations which now belong or may hereafter belong to his Majesty, and also to all offices commissions places and employments belonging to or under the appointment or controul of the united company of merchants of *England* trading to the *East Indies* in as full and ample a manner as if the provisions of the said Act were repeated as to all such offices commissions places and employments and made part of this Act; and the said Act and this Act and all the clauses and provisions therein respectively contained shall be construed as one Act as if the same had been herein repeated and re-enacted.

Provisions of said Act, 5 and 6 Ed. 6. c. 16. extended to Scotland and Ireland and to all Offices in the Gift of the Crown, &c.

No. III. 49 Geo. III. c. 126.

II. Provided always, and be it further enacted, That where the right estate or interest of any person or persons shall be forfeited under any of the provisions of the said Act or this Act the right of such appointment shall immediately vest in and belong to his Majesty his heirs and successors.

When Right of Appointment is forfeited Offices vested in His Majesty.

Persons buying or selling, or receiving or paying Money or Rewards for Offices, guilty of Misdemeanor.

III. And be it further declared and enacted, That from and after the passing of this Act, if any person or persons shall sell or bargain for the sale of or receive have or take any money fee gratuity loan of money reward or profit directly or indirectly, or any promise agreement covenant contract bond or assurance or shall by any way device or means contract or agree to receive or have any money fee gratuity loan of money reward or profit directly or indirectly, and also if any person or persons shall purchase or bargain for the purchase of or give or pay any money fee gratuity loan of money reward or profit or make or enter into any promise agreement covenant contract bond or assurance to give or pay any money fee gratuity loan of money reward or profit, or shall by any way means or device contract or agree to give or pay any money fee gratuity loan of money reward or profit directly or indirectly for any office commission place or employment specified or described in the said recited Act or this Act or within the true intent or meaning of the said Act or this Act or for any deputation thereto or for any part parcel or participation of the profits thereof or for any appointment or nomination thereto or resignation thereof or for the consent or consents or voice or voices of any person or persons to any such appointment nomination or resignation, then and in every such case every such person and also every person who shall wilfully and knowingly aid abet or assist such person therein shall be deemed and adjudged guilty of a misdemeanor.

Persons receiving or paying Money for soliciting or obtaining Offices and any Negociations or pretended Negociations relating thereto; guilty of a Misdemeanor.

IV. And be it further enacted, That from and after the passing of this Act if any person or persons shall receive have or take any money fee reward or profit directly or indirectly, or take any promise agreement covenant contract bond or assurance, or by any way means or device contract or agree to receive or have any money fee gratuity loan of money reward or profit directly or indirectly for any interest solicitation petition request recommendation or negociation whatever made or to be made or pretended to be made or under any pretence of making or causing or procuring to be made any interest solicitation petition request recommendation or negociation in or about or in any wise touching concerning or relating to any nomination appointment or deputation to or resignation of any such office commission place or employment as aforesaid, or under any pretence for using or having used any interest solicitation petition request recommendation or negociation in or about any such nomination appointment deputation or resignation, or for the obtaining or having obtained the consent or consents or voice or voices of any person or persons as aforesaid to such nomination appointment deputation or resignation; and also if any person or persons shall give or pay or cause or procure to be given or paid any money fee gratuity loan of money reward or profit or make or cause or procure to be made any promise agreement covenant contract bond or assurance or by any way means or device contract or agree or give or pay or cause or procure to be given or paid any money fee gratuity loan of money reward or profit for any solicitation petition request recommendation or negociation whatever made or to be made that shall in anywise touch concern or relate to any nomination appointment or deputation to or resignation of any such office commission place or employment as aforesaid, or for the obtaining or having obtained directly or indirectly the consent or consents or voice or voices of any person or persons as aforesaid to any such nomination appointment deputation or resignation; and also if any person or persons shall for or in expectation of gain fee gratuity loan of money reward or profit solicit recommend or negociate in any manner for any person or persons in any matter that shall in anywise touch concern or relate to any such nomination appointment deputation or

resignation aforesaid, or for the obtaining directly or indirectly the consent or consents or voice or voices of any person or persons to any such nomination appointment or deputation or resignation aforesaid, then and every such case every such person and also every person who shall wilfully and knowingly aid abet or assist such person therein, shall be deemed and adjudged guilty of a misdemeanor.

Persons opening or advertising Houses for tranacting Business relating to Sale of Offices, guilty of a misdemeanor.

V. 'And whereas on the pretence of negociating or soliciting the sale 'transfer or appointment of any office or offices which under the exception of this Act or otherwise it may be lawful to sell offices for 'negociating the same and advertisements may be published by means 'and under the colour of which illegal transactions intended to be 'prohibited by this Act may be carried on;' Be it therefore further enacted, That from and after the passing of this Act, if any person or persons shall open or keep any house room office or place for the soliciting transacting or negociating in any manner whatever any business relating to vacancies in or the sale or purchase of or appointment nomination or deputation to or resignation transfer or exchange of any offices commissions places or employments whatever in or under any publick department, then and in every such case every such person and also every person who shall wilfully and knowingly aid abet or assist therein shall be deemed and adjudged guilty of a misdemeanor.

Penalty on Persons advertising or publishing the Names of Brokers or Agents, 50*l.*

VI. And be it further enacted, That if any person or persons shall advertise or publish or cause or procure to be advertised or in any manner publish any house room office or place to have been or to be opened set up or kept for any of the purposes aforesaid, or advertise or publish or cause or procure to be advertised or published the name or names of any person or persons as broker or brokers agent or agents solicitor or solicitors for any of the purposes aforesaid, or print or cause or procure or permit or suffer to be printed or advertised any advertisement or advertisements proposal or proposals for any of the purposes aforesaid, then and in such case such person or persons shall forfeit for every such offence the sum of fifty pounds to be sued for levied or recovered in any of his Majesty's Courts of Record at *Westminster* as to all offences committed in *England* or at *Dublin* as to the offences committed in *Ireland*, or in his Majesty's courts in *Scotland* as to offences committed in *Scotland* respectively; and the whole of every such penalty shall go to the person who shall sue for the same with full costs of suit.

Exception as to Purchase or Sale of certain Offices in the Palace or Commissions in the Army at the regulated Prices and authorized Regimental Agents acting without Fee.

VII. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to any purchases sales or exchanges of any commissions or appointments in the honourable band of gentlemen pensioners or in his Majesty's yeoman guard or in the Marshalsea and the court of the King of the palace of the King at *Westminster*, or to extend to any purchases sales or exchanges of any commissions in his Majesty's forces for such prices as shall be regulated and fixed by any regulation made or to be made by his Majesty in that behalf, or to any act or thing done in relation thereto by any agents provided that such agents shall be agents of regiments authorized by the commander in chief of his Majesty's forces or by the colonels or commandants of regiments or corps, and shall act therein under such regulations only as are or shall from time to time be established by his Majesty and shall not cause or procure or knowingly permit or suffer to be printed or advertised any advertisement or advertisements proposal or proposals for any purchase or sale or exchange of any commission or any negociation relating thereto and shall not receive or take any money fee gratuity or reward or any promise agreement covenant contract bond or assurance or by any way means or device contract or agree to receive or have any money fee gratuity or reward for acting in such behalf.

Officers in Army giving more than regulated Prices or paying their Commissions

VIII. Provided also, and be it further enacted, That every officer in his Majesty's forces who shall take, accept or receive or pay or agree to pay any larger sum of money directly or indirectly than what is allowed by any regulations made by his Majesty in relation to the purchase sale or exchange of commissions in his Majesty's forces, or who shall pay or

Agents for negociating, shall forfeit their Commissions, and be cashiered; be sold; Half of the Produce (not exceeding 500*l.*) to the Informer, &c.

No. III. 49 Geo. III. c. 126.

cause to be paid any sum of money to any agent or broker or other person for negociating the purchase or sale or exchange of any such commission shall on being convicted thereof by a general court martial forfeit his commission and be cashiered; and as an encouragement for the detection of such practices such commission so forfeited shall be sold and half the regulated value (not exceeding five hundred pounds) shall be paid to the informer and the other half or the remainder if more than five hundred pounds shall go and be applied as his Majesty shall order and direct by any regulations from time to time made in that behalf: Provided also, that every person who shall sell his commission in his Majesty's forces and not continue to hold any commission in his Majesty's forces, and shall upon or in relation to such sale take accept or receive directly or indirectly any money fee gratuity loan of money reward or profit or any promise agreement covenant contract bond or assurance, or shall by any device or means contract or agree to receive or have any money fee gratuity loan of money reward or profit beyond the regulated price or value of the commission sold, and also every person who shall wilfully or knowingly aid abet or assist such person therein shall be deemed and adjudged guilty of a misdemeanor within the provisions of this Act.

Exceptions as to Offices excepted in former Act, and Offices legally saleable, &c.

IX. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to any office excepted from the provisions of the said Act passed in the sixth year of the reign of King *Edward* the Sixth against buying and selling of Offices, or to any office which was legally saleable before the passing of this Act and in the gift of any person by virtue of any office of which such person is or shall be possessed under any patent or appointment for his life; or to render invalid or in any manner to affect any promise agreement covenant contract bond assurance or trust entered into or declared before the passing of this Act, and which before the passing thereof was a valid promise agreement covenant contract bond assurance or trust in law or equity, or to any money paid, or to any act matter or thing done in pursuance of any such promise agreement covenant contract bond or assurance.

Saving of lawful Deputations and Payments out of the Fees.

X. Provided also, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to prevent or make void any deputation to any office in any case in which it is lawful to appoint a deputy, or any agreement contract bond or assurance lawfully made in respect of any allowance salary or payment made or agreed to be made by or to such principal or deputy respectively out of the fees or profits of such Office.

Exception as to annual Payments out of the Fees to any Person formerly holding the Office.

XI. Provided also, and be it further enacted, That nothing in the said Act or in this Act contained shall extend to any annual reservation charge or payment made or required to be made out of the fees perquisites or profits of any Office to any person who shall have held such Office, in any commission or appointment of any person succeeding to such Office, or to any agreement contract bond or other assurance made for securing such reservation charge or payment: Provided always, that the amount of such reservation charge or payment and the circumstances and reasons under which the same shall have been permitted, shall be stated in the commission patent warrant or instrument of appointment of the person so succeeding to and holding such office and paying or securing such money as aforesaid.

Exception as to Masters, Six Clerks, and Examiners of the Chancery in Ireland, till after the Death, &c. of the present Possessors.

XII. 'And whereas the Parliament of *Ireland* never enacted any provisions similar to those contained in the said recited Act of the fifth and sixth years of King *Edward* the Sixth: And whereas it hath always been customary in the appointment of the masters and six clerks and first and second examiners of the court of Chancery in *Ireland* to allow the having and receiving of money or other valuable consideration for those appointments; and although it may be fit and proper that the said custom should be abolished, yet it is reasonable that the several and respective persons who now hold the said Offices should be permitted to dispose of the same in like manner as hath been heretofore done:' Be it therefore enacted, That it shall and may be lawful for the said

No. III.
49 Geo. III. c. 126.

masters and six clerks and first and second examiner or any of them (save and except *George Ellis* Esquire, one of the masters of the said court) so to proceed touching the disposition and appointment of their said Offices respectively, in such and the like manner to all intents and purposes as hath been heretofore accustomed; but that from and after the death resignation or removal of each of them, and the actual appointment of any person in the stead of the persons so dying resigning or being removed, the powers and provisions of the said recited Act and of this Act shall be applicable and shall be applied to the said respective Offices in the said court of Chancery in *Ireland*.

Punishment of Misdemeanors in Scotland.

XIII. Provided always, and be it enacted, That every person who shall commit in *Scotland* any offence against this Act, which by the provisions of the same is constituted a misdemeanor, shall be liable to be punished by fine and imprisonment, or by the one or the other of such punishments as the judge or judges before whom such offence shall be tried and convicted may direct.

Offences committed abroad shall be tried in King's Bench, under 42 G. 3. c. 85.

XIV. And be it further enacted, That all offences committed against the provisions of the said recited Act and this Act, by any governor lieutenant governors or person having the chief command civil or military in any of his Majesty's dominions colonies or plantations, or his or their secretary or secretaries may and shall be prosecuted and enquired of and heard and determined in his Majesty's court of King's Bench at *Westminster* in like manner as any crime offence or misdemeanor committed by any person holding a publick employment abroad may be prosecuted and enquired of under the provisions of an Act passed in the forty-second year of the reign of his present Majesty, intituled *An Act for the trying and punishing in* Great Britain *Persons holding public Employments for Offences committed abroad; and for extending the Provisions of an Act passed in the Twenty-first Year of the Reign of King* James, *made for the Ease of Justices and others in pleading in Suits brought against them, to all Persons either in or out of this Kingdom, authorized to commit to safe Custody.*

Commencement of the Act in certain Places abroad.

XV. Provided always, and be it further enacted, That nothing in the said recited Act or this Act contained shall extend or be construed to extend to *Gibraltar Malta* or any place or places in the *Mediterranean* until three months; or to any of his Majesty's dominions colonies or plantations in *America* or the *West Indies* until four months; or to the *Cape of Good Hope* the island of *Saint Helena* or any part of *Africa* until six months; or to any of his Majesty's dominions in the *East Indies* or beyond the *Cape of Good Hope* until twelve months after the passing of this Act.

[No. IV.] 53 George III. c. 54.—An Act to amend an Act made in the Forty-ninth Year of His Majesty's Reign, intituled, *An Act for the further Prevention of the Sale and Brokerage of Offices.*

53 Geo. III. c. 54.
49 Geo. 3. c. 126. Sec. 7.

'WHEREAS an Act was passed in the forty-ninth year of his Majesty's reign, intituled *An Act for the further Prevention of the Sale and Brokerage of Offices:* And whereas it was by the said Act, amongst other things, provided, that nothing therein contained should extend or be construed to extend to any purchases sales or exchanges of any commissions or appointments in his Majesty's yeoman guard: And whereas no mention is made in said Act of his Majesty's battle axe guards in *Ireland*, and it is reasonable that the said battle axe guards should be also excepted from the operation of the said Act;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That nothing in the said Act contained for preventing the purchase sale exchange or brokerage of offices, shall extend or be construed to extend to any purchases sales or exchanges of any commissions or appointments in his Majesty's battle axe guards in *Ireland;* any thing in the said Act contained to the contrary in any wise notwithstanding.

Not to extend to His Majesty's Battle Axe Guards in Ireland.

PART III.

CLASS X.

Buying of Titles.

[No. I.] 3 Edward I. c. 25.—None shall commit Champerty, to have Part of the Thing in Question.

3 Edw. I. c. 25.
9 H. 7. 18.
15 H. 7. 2.
Regist. 128.
Rast. 119.
2 Inst. 297.

'NO officer of the King by themselves nor by other shall maintain pleas suits or matters hanging in the King's courts for lands tenements or other things, for to have part or profit thereof by covenant made between them; and he that doth shall be punished at the King's pleasure.'

[No. II.] 13 Edward I. st. 1. c. 49.—The Penalty for buying the Title of Land depending in Suit. A Remedy for Suits where the Law faileth.

13 Edw. I. c. 49.
Fitz. Champerty. 1. 5. 6. 8.
12. 14. 15.
Hob. 117.
3 Ed. I. c. 25.
Regist. 182.
183. Rast. 119.

'THE chancellor treasurer justices nor any of the King's counsel, no clerk of the Chancery nor of the Exchequer nor of any justice or other officer nor any of the King's house, clerk ne lay, shall not receive any church nor advowson of a church land nor tenement in fee by gift nor by purchase nor to farm nor by champerty nor otherwise, so long as the thing is in plea before us or before any of our officers; (2) nor shall take no reward thereof. (3) And he that doth contrary to this Act either himself or by another or make any bargain, shall be punished at the King's pleasure as well he that purchaseth as he that doth sell.'

[No. III.] 32 Henry VIII. c. 9.—The Bill of Bracery and buying of Titles.*

32 H. VIII. c. 9.
7 Roll. 447.
4 Mod. 84.
Savil 42.
1 Leon. 166.
208.
2 Leon. 39. 48.
Co. pl. f. 258.
364. Moor 266.
pl. 414.
3 Leon. 233.

'THE King our Sovereign Lord calling to his most blessed remembrance that there is nothing within this realm that conserveth his loving subjects in more quietness rest peace and good concord than the due and just ministration of his laws and the true and indifferent trials of such titles and issues as been to be tried according to the laws of this realm, which his most royal Majesty perceiveth to be greatly hindred and letted by maintenance embracery champerty subornation of witnesses sinister labour buying of titles and pretended rights of persons not being in possession, whereupon great perjury hath ensued and much inquietness oppression vexation troubles wrongs and disinheritance hath followed among his most loving subjects, to the great displeasure of Almighty God the discontentation of his Majesty and to the

* The doctrines of Maintenance, Champerty, and buying of Titles, are become in a great measure obsolete, as matter of criminal law, and very seldom come into notice as affecting the validity of contracts. In Sharp *v.* Carter, 3 P. Wms. 375. and Hitchen *v.* Lawler. Cooper 31, pleas of the Statute were allowed against discoveries which might tend to subject the parties to the penalties thereby imposed. In Wall *v.* Stubbs, 2 V. & B. 354. the defendant to a bill for specific performance pleaded the statute, and that the plaintiff, or those under whom he claimed, had not been in possession for a year, &c. (following the statute) which plea was disallowed on account of not being put in on oath. In the same case it was afterwards inserted by way of answer, that as the

No. III. 32 H. VIII. c. 9.

'great hindrance and let of justice within this his realm:' For the avoiding of all which misdemeanors and buying of titles and pretended rights, and to the intent that justice may be more fully and indifferently ministred, and the truth in causes of contention plainly tried between his subjects of this realm; Be it enacted by our said Sovereign Lord, with the assent of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, and by authority of the same, That from henceforth all statutes heretofore made concerning maintenance champerty and embracery or any of them now standing and being in their full strength and force, shall be put in due execution according to the tenures and effects of the same statutes.

II. And over that, be it further enacted by the authority aforesaid, That no person nor persons of what estate degree or condition soever he or they be, shall from henceforth bargain buy or sell or by any ways or means obtain get or have any pretended rights or titles or take promise grant or covenant to have any right or title of any person or persons in or to any manors lands tenements or hereditaments (except such person or persons which shall so bargain sell give grant covenant or promise the same, their ancestors or they by whom he or they claim the same, have been in possession of the same or of the reversion or remainder thereof, or taken the rents or profits thereof by the space of one whole year next before the said bargain covenant grant or promise made) upon pain that he that shall make any such bargain sale promise covenant or grant, to forfeit the whole value of the lands tenements or hereditaments so bargained sold promised covenanted or granted, contrary to the form of this Act; And the buyer and taker thereof knowing the same to forfeit also the value of the said lands tenements or hereditaments so by him bought or taken as is abovesaid; the one half of the said forfeitures to be to the King our Sovereign Lord, and the other half to the party that will sue for the same in any of the King's courts of record by action of debt bill plaint or information; in which action bill plaint or information no essoin protection wager of law nor injunction shall be allowed.

Hob. 115. Godb. 450. Golbsb. 101. pl. 6. Hetley 164. Plowd. 78. Dyer 74. 4 Co. 26. Bro. Maintenance 38. Cro. El. 257. Cro. Car. 43. 1 Andors. 76. 78, 201.

III. And furthermore, That no manner of person or persons of what estate degree or condition soever he or they be, do hereafter unlawfully maintain or cause or procure any unlawful maintenance in any action demand suit or complaint in any of the King's Courts of the Chancery the Star Chamber *Whitehall* or elsewhere within any of the King's do-

Unlawful Maintaining of a Suit depending in any of the King's Courts.

Goldsb. 113. pl. 1. Rast. pl. f. 430.

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vendor was himself only intitled to the estate by virtue of an agreement with the persons of whom he had purchased it, and no conveyance had been made to him, or possession taken, the statute 38 Henry VIII. applied. But the case being decided in favour of the defendant on another ground, it became unnecessary to consider the objection arising out of the statute.

It would certainly seem a perversion of the law to consider a case as falling within the statute upon the mere ground of the objection taken in the preceding case, where the possession was consistent with the vendor's title, and the only defect was in the conveyance of the legal estate, of which the first vendor was, in the contemplation of courts of equity, a trustee for his vendee, the second vendor, and was the person under whom such vendee claimed.

In Underwood *v.* Lord Courtown, 2 S. & L. Lord Redesdale said, "A person out of possession cannot in law convey any thing to a stranger; he can give only a release to one in possession, and the law has wisely provided this in order to quiet possessions." From the early statutes which I have thought it eligible to introduce, it appears that the law upon this subject was originally instituted upon the most wise and salutary principles, and as a guard against that judicial corruption, the prevalence of which is rendered most apparent by the numerous provisions instituted against it. Whether there is equal necessity for continuing such a law in the existing state of the community is a question which may admit of a very different consideration. The possession which has the benefit of the protection of the law is, by the very supposition of the case, a possession founded in wrong, and the practical effect of prohibiting any contract with relation to the right which is withheld, is to render that right nugatory and unavailing, unless the party in whom it is vested has in his own funds the means of resorting to legal remedies for its infraction. A further effect is, that such right can only pass by operation of law and cannot be affected by any testamentary or other disposition.—See some very judicious observations on the law of Champerty in Bentham's Defence of Usury.

See also the observations of Mr. Justice Buller, in Master *v.* Miller, 4 T. R. 320. and of Lord Chief Justice Mansfield, in Goodright *v.* Forrester, 1 Taunt, 578. and note to statute 32 Henry 8. c. 1. *ante* Part II. Class XI. No. 1.

No. III. 32 H. VIII. c. 9.

minions of *England* and *Wales* or the marches of the same, where any person or persons have or hereafter shall have authority by virtue of the King's commission patent or writ to hold plea of lands or to examine hear or determine any title of lands or any matter or witnesses concerning the title right or interest of any lands tenements or hereditaments; and that no person nor persons of what estate degree or condition soever he or they be, do hereafter unlawfully retain for maintenance of any suit or plea any person or persons, or embrace any freeholders or jurors or suborn any witness by letters rewards promises or any other sinister labour or means, for to maintain any matter or cause or to the disturbance or hindrance of justice or to the procurement or occasion of any manner of perjury by false verdict or otherwise in any manner of courts aforesaid, upon pain to forfeit for every such offence x. li. the one moiety thereof unto the King our Sovereign Lord, and the other moiety to him that will sue for the same by action of debt bill plaint or information in any of the King's courts; in which action no essoin protection wager of law nor injunction shall be allowed.

The Penalty is enlarged to 40*l.* by 5 El. c. 9. §. 3.

Bro. Maintenance, 1. 3. 5. 6. 7. 8. 9. 13. 14.

Purchasing of a pretended Title by him that is in possession is lawful.

Dyer 53.

IV. Provided always, and be it enacted by the authority aforesaid, That it shall be lawful to any person or persons being in lawful possession by taking of the yearly farm rents or profits of or for any manors lands tenements or hereditaments, to buy obtain get or have by any reasonable ways or means the pretenced right or title of any other person or persons, hereafter to be made to of or in such manors lands tenements or hereditaments whereof he or they shall so be in lawful possession; any thing in this Act contained to the contrary notwithstanding.

Proclamation of the Statutes of Maintenance. Champerty, &c. shall be made at the Assizes.

V. And for the due execution of this present Act be it further enacted by authority aforesaid, That the justices of assize of every circuit within this realm and elsewhere within the King's dominions, shall in every county within their circuits two times in the year, that is to say, in the time of their sittings for the taking of assizes or delivery of the gaols cause open proclamation to be made as well of this present Act and of every thing therein contained, as also of all other statutes heretofore made against unlawful maintenance champerty embracery or unlawful retainers, to the intent that no manner of person or persons hearing the same should be ignorant or miscognisant of the dangers and penalties therein contained and specified.

Within what time the Offender shall be sued.

Rast. 119. 427. Co. pl. C. 163. Co. Lit. 369. a.

VI. Provided alway, and be it enacted by the authority aforesaid, That this Act shall not extend to charge any person or persons with any of the penalties mentioned in the said Act for any offence by him or them committed contrary to the said Act, except the same person or persons so offending be sued thereof by action of debt bill plaint or information in any of the King's courts, within one year next after the same offence by him or them committed as is aforesaid.

PART III.

CLASS XI.

Transfer of Stock.

[No. I.] 36 Geo. III. c. 90.—An Act for the Relief of Persons equitably and beneficially entitled to or interested in the several Stocks and Annuities transferrable at the Bank of *England*.*—[14*th May*, 1796.]

36 Geo. III. c. 90.

'WHEREAS by the laws in being relative to the transfers of Stocks and Annuities transferrable at the Bank of *England* all such transfers are required to be entered or registered; and such entries are to be conceived in proper words for that purpose and to be signed by the parties making such transfers or (if such party be absent) by his her or their attorney thereunto lawfully authorized; and it is also declared, that no other method of assigning or transferring such Stock and Annuities shall be good or available in law: And whereas the persons equitably and beneficially entitled to or interested in the said Stocks and Annuities have been and are put to great inconveniencies by reason that the trustees and other persons according to the said laws in being alone qualified to make transfers and to receive the dividends of such Stocks and Annuities vested in them in trust have been and are absent out of the jurisdiction or not amenable to the process of the High Court of Chancery or the Court of Exchequer; and other cases of like inconvenience have arisen:' For remedy whereof be it enacted by the King's most excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, when and as often as it shall happen that all and every the person or persons in whose name or names any part or parts of the several stocks and annuities transferrable or which hereafter shall be made transferrable at the bank of *England*, is are or shall be standing as a trustee or trustees or the legal personal representative or representatives of any such person or persons being deceased, shall be absent out of the jurisdiction or not amenable to the process of the said courts of Chancery and Exchequer, or shall be a bankrupt or bankrupts lunatic or lunatics, or shall refuse to transfer the stock or annuities so legally vested in him her or them, or to receive or pay over the dividends of such stock or annuities to the person or persons beneficially entitled thereto, or it shall be uncertain or unknown whether such trustee or trustees representative or representatives is or are living or dead; and then and in all and every such case and cases it shall and may be lawful to and for the said courts of Chancery and Exchequer respectively in any cause depending in the said courts respectively to order and direct that the accountant general or the secretary or deputy secretary for the time being of the governor and company of the bank of *England* do transfer in the book or books of the said company such stock or annuities as aforesaid, either to and into the name of the accountant general of the said court of Chancery or

When Trustees, in whose Names Stock shall be standing at the Bank, shall be absent, out of the Jurisdiction of the Chancery and Exchequer, or be Bankrupts, &c. the said Courts in any Cause depending therein, may order the stock to be transferred and the Dividends paid; and when all the Trustees cannot be found, may order the forthcoming ones to transfer Stock, &c.

* See Shaw *v.* Wright, 3 Ves. 22. 25.—Rider *v.* Kidder, 13 Ves. 123. It certainly will be very desirable to apply the principle of these acts to real estates, and to enable the courts of equity by the medium of their officers, to execute the functions of unknown, absent, or incapable trustees.

No. I. 36 Geo. III. c. 90.

of the deputy remembrancer of the said court of Exchequer in trust in such cause or otherwise to and into the name or names of the person or persons equitably or beneficially entitled to such stock or annuities as the cases may respectively require and as to the said courts of Chancery and Exchequer shall in their discretion seem fit; and also to order and direct that the said accountant general secretary or deputy secretary for the time being of the governor and company of the bank of *England* do also receive and pay over the dividends of such stock and annuities as the said courts shall direct; and when and as often as it shall happen that one or more only and not all or both of such trustees or personal representatives as aforesaid shall be so absent or not amenable to such process as aforesaid, or a bankrupt or bankrupts lunatic or lunatics, or shall so refuse as aforesaid, or it be uncertain or unknown whether any one or more of such trustees or representatives is or are living or dead, that then and in all and every such last mentioned case and cases it shall and may be lawful to and for the said courts of Chancery and Exchequer respectively to order and direct that the other and others of such trustees and representatives who shall be forthcoming and ready and qualified to act do transfer such stock or annuities to and into the name or names of such person or persons as aforesaid, as the cases may respectively require and as to the said courts shall in their discretion seem fit; and also that such forthcoming trustee or trustees representative or representatives do also receive and pay over the dividends of such stock or annuities as the said courts shall direct; and that all such transfers and payments so made in pursuance of this Act shall be and are hereby declared to be valid and effectual to all intents and purposes whatsoever; any former statute law custom or usage to the contrary in anywise notwithstanding.

If Bankrupts refuse to transfer Stock standing in their own right, the Lord Chancellor may order it to be transferred to the Assignees.

II. 'And whereas it hath frequently happened that commissions of 'bankrupt have issued against persons having certain parts of the said 'Stocks or Annuities transferrable at the bank of *England* standing 'in their names in their own right, and such persons have thereupon 'been declared and adjudged bankrupts, but have nevertheless refused 'to transfer or join in transferring such Stock or Annuities;' for remedy whereof be it enacted by the authority aforesaid, That from and after the passing of this Act, when and as often as any person or persons shall be declared or adjudged bankrupt, having any part or parts of the stocks or annuities transferrable or which hereafter shall be made transferrable at the bank of *England*, standing in his her or their name or names in his her or their own right, it shall and may be lawful to and for the lord chancellor lord keeper or commissioners for the custody of the great seal of *Great Britain* for the time being, on the petition of the assignee or assignees chosen under the said commission, to order the said accountant general secretary or deputy secretary for the time being of the governor and company of the bank of *England* to transfer the said stock or annuities so standing in the name or names of the said bankrupt or bankrupts in his her or their own right to and into the name or names of the said assignee or assignees, and also to receive and pay over the dividends of such stock and annuities as the said lord chancellor lord keeper or commissioners for the custody of the great seal of *Great Britain* shall direct; and that all such transfers and payments shall be valid and effectual to all intents and purposes whatsoever; any former statute law custom or usage to the contrary thereof in anywise notwithstanding.

Stock standing in the Names of Lunatics, or their Committees, may in certain cases be ordered by the Lord Chancellor, to be transferred, &c. 2 Merrivale, 112.

III. 'And whereas commissions in the nature of a writ *de lunatico inquirendo* have frequently issued and persons have thereupon been found 'lunatics having certain parts of the stocks and annuities transferrable 'at the bank of *England* standing in the names of such lunatics in their 'own right, and the committees of the estates of such lunatics having 'like parts of such stocks and annuities standing in their own names in 'trust for or as part of the property of such lunatics have sometimes died 'intestate or gone to reside beyond the seas or have themselves become 'lunatics, or it has been uncertain and unknown whether they were 'living or dead: And whereas it is sometimes proper and expedient that

No. I.
36 Geo. III. c. 90.

'such parts of the property of such lunatics as aforesaid should be transferred, but by the laws in being no valid or effectual transfer thereof can be made whereby great inconveniencies have arisen;' For remedy whereof be it enacted by the authority aforesaid, That from and after the passing of this Act in all cases whatsoever where any such stock or annuities transferrable or thereafter to be made transferrable at the bank of *England* is are or shall be standing in the name or names of such lunatic or lunatics in his her or their own right or in the name or names of the committee or committees of his her or their estate or estates in trust for the said lunatic or lunatics, or as part of his her or their property it shall and may be lawful to and for the Lord Chancellor Lord Keeper or Commissioners of the great seal of *Great Britain* for the time being to order the accountant general secretary or deputy secretary for the time being of the governor and company of the bank of *England* to transfer such stock or annuities to or into the name of any new committee or committees or otherwise and also to receive and pay over the dividends thereof as the said Lord Chancellor Lord Keeper or Commissioners of the great seal of *Great Britain* for the time being shall direct; and that such transfers and payments shall be valid and effectual to all intents and purposes whatsoever; any former statute law custom or usage to the contrary thereof in anywise notwithstanding.

Act to be an Indemnity to the Bank.

IV. And be it enacted by the authority aforesaid, That this present Act shall be and is hereby declared to be a full and complete indemnity and discharge to the said governor and company of the bank of *England* their officers and servants for all things done or permitted to be done pursuant thereto and that the same shall not be questioned or impeached in any court of law or equity whatsoever to their prejudice or detriment; and that this present Act shall be and is hereby declared to be and to be reputed and taken as a publick Act to all intents and purposes whatsoever.

[No. II.] 52 Geo. III. c. 32.—An Act for the Relief of Infant Suitors in Courts of Equity, entitled to Stock or Annuities in any of the Public or other Funds, transferrable at the Bank of *England*.—[*20th April* 1812.]

52 Geo. III. c. 32.

'WHEREAS inconvenience has been experienced from the want of authority in the courts of Chancery and Exchequer to direct for the use of infants the payment of the dividends of stock belonging to such infants and standing in their names in the books of the governor and company of the bank of *England*:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act it shall and may be lawful to and for the courts of Chancery and Exchequer respectively in any cause depending or hereafter to be depending in the said courts respectively to order and direct all or any dividends due and belonging or hereafter to become due and belonging to any infant or infants parties to any such cause on any of the publick or other stocks funds or annuities whatsoever transferrable or which shall or may hereafter be made transferrable in the books of the governor and company of the bank of *England* standing in the name or names of such infant or infants and to which such infant or infants is or are beneficially entitled, to be paid to any guardian or guardians of such infant or infants respectively or to any other person or persons according to the discretion of such courts respectively to or for the maintenance and education or otherways for the use and benefit of such infant or infants; such guardian or guardians or other person or persons to whom such payment is directed to be made being named in the order directing such payment; and the receipt acquittance or discharge of such guardian or guardians or other person or persons so named for such dividend or dividends or sum or sums of money as shall be so ordered and directed to be paid

Court of Chancery or Exchequer may order Dividends or Stocks, &c. belonging to Infants, to be paid to Guardians for Maintenance of Infants, &c.

No. II. 52 Geo. III. c. 32.

to them or any part thereof shall be as good valid and effectual at all times and to all intents and purposes whatsoever both at law and in equity to and for the said governor and company of the bank of *England* against such infant or infants to whom such dividend or dividends sum or sums of money have been or shall be due and belong his her or their executors administrators or assigns as if such receipt acquittance or discharge had been actually signed by such infant or infants after he she or they had actually attained his her or their age of majority and were capable by law of signing and giving the same; and that this Act shall be and is hereby declared to be a full and complete indemnity and discharge to the said governor and company of the bank of *England* their officers and servants for all things done or permitted to be done pursuant thereto; and this Act shall be deemed and taken as a publick Act to all intents and purposes whatsoever.

Public Act.

[No. III.] 52 Geo III. c. 158.—An Act to extend the Provisions of an Act passed in the Thirty-sixth Year of the Reign of His present Majesty, for the Relief of Persons equitably entitled to Stocks and Annuities transferrable at the Bank of *England*, and of an Act passed in this present Session for the Relief of Infant Suitors entitled to the like Stocks and Annuities, to all other transferrable Stocks and Funds.—[29*th July* 1812.]

52 Geo. III. c. 158. 36 Geo. 3. c. 90. Sec. 1.

'WHEREAS by an Act passed in the thirty-sixth year of the reign of his present Majesty, intituled *An Act for the Relief of Persons equitably and beneficially entitled to or interested in the several Stocks and Annuities transferrable at the Bank of* England, provision is made for the transfer and receipt of dividends under and by the direction of his Majesty's High Court of Chancery or of the Court of Exchequer of and on stocks and annuities transferrable at the bank of *England* standing in the name or names of any person or persons who being trustee or trustees or the legal personal representative or representatives of any such person or persons shall be absent out of the jurisdiction or not amenable to the process of the courts of Chancery and Exchequer, or who are bankrupt or bankrupts lunatic or lunatics, or who shall refuse to transfer the stock or annuities legally vested in him her or them or to receive or pay over the dividends of such stock or annuities to the person or persons beneficially entitled thereto, or in case it is uncertain or unknown whether such trustee or trustees representative or representatives is or are living or dead; and by the same Act provision is made for the transfer under the direction of the Lord Chancellor of stocks and annuities transferrable at the bank of *England* standing in the

Sec. 2.

names of persons declared or adjudged bankrupt in his her or their own right, and for receipt of the dividends of such stock and annuities; and by the same Act provision is made for the transfer under

Sec. 3.

the like direction, of stock and annuities transferrable at the bank, standing in the name or names of a lunatic or lunatics in his her or their own right, or in the name or names of the committee or committees of his her or their estate or estates in trust for the said lunatic or lunatics or as part of his her or their property: And whereas by an Act passed in this present session of Parliament, intituled *An Act for the Relief of the Infant Suitors in Courts of Equity, entitled to Stock or Annuities in any of the Public or other Funds, transferrable at the Bank of* England,

52 G. 3. c. 32.

it is enacted, That it shall be lawful for the courts of Chancery and Exchequer to order and direct all or any dividends due to any infant or infants or any of the publick or other stocks funds or annuities transferrable in the books of the governor and company of the bank of *England* standing in the name or names of such infant or infants and to which such infant or infants is or are beneficially entitled to be paid

No. III.
52 Geo. III. c. 158.

'for the use and benefit of such infant or infants: And whereas it is 'expedient that the operation of the said Acts respectively should be extended to *South Sea* stock *East India* stock and all other transferrable 'stocks annuities and funds;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That all and every the provisions and enactments in the said several Acts contained in any ways relating to any stock or annuities transferrable at the bank of *England* or transferrable in the books of the governor and company of the bank of *England* or to any dividends on such stocks or annuities shall be deemed and construed to extend and are hereby extended to *South Sea* stock *East India* stock and all other stocks annuities and funds transferrable or to be made transferrable in the books of the *South Sea* company, or in the books of the United Company of Merchants of *England* trading to the *East Indies*, or in the books of any other company or society established or to be established and to the dividends payable thereon respectively as fully as if such several provisions and enactments *mutatis mutandis* were here inserted at length.

Extended to South Sea, East India and all other Stocks.

II. Provided always and be it enacted, That in all cases in which by the said first recited Act any act is directed to be done by the accountant general or the secretary or deputy secretary for the time being of the governor and company of the bank of *England*, the same acts so far as they relate to *South Sea* stock *East India* stock or any other stocks or annuities to which the enactments and provisions of the said recited Acts are hereby extended shall be done by such persons as shall be appointed for that purpose by the several orders of the court of Chancery or court of Exchequer or of the Lord High Chancellor, under the authority of which such acts respectively are to be done.

Court of Chancery to give necessary Orders.

III. And be it enacted, That this present Act shall be and is hereby declared to be a full and complete indemnity and discharge to the *South Sea* company the *East India* company and all other companies and societies and their officers and servants for all things done or permitted to be done pursuant thereto, and that the same shall not be questioned or impeached in any court of law or equity to their prejudice or detriment.

Acts done under Act not impeached.

[No. IV.] 58 Geo. III. c. 80.—An Act to amend an Act passed in the Fifty-seventh Year of his present Majesty, for permitting the Transfer of Capital from certain Public Stocks or Funds in *Great Britain* to certain Public Stocks or Funds in *Ireland*.—[*5th June* 1818.]

[No. V.] 1 Geo. IV. c. 5.—An Act to enable Courts of Equity in *Ireland* to compel a Transfer of Stock in Suits without making the Governor and Company of the Bank of *Ireland* or any Canal Company Party thereto.—[*6th June* 1820.]

[No. VI.] 1 & 2 Geo. IV. c. 73.—An Act to permit for Three Years the Transfer from certain Public Stocks or Funds in *Ireland* to certain Public Stocks or Funds in *Great Britain*.—[*2d July* 1821.]

PART III.

CLASS XII.

Restitution of Stolen Property.

[No. I.] 21 Henry VIII. c. 11.—At what Time Restitution shall be made of Goods stolen.

21 Henry 8. c. 11.

There shall be Restitution to the Owner of stolen Goods after the Attainder of the Felon.

2 Bulstr. 310. Cro. El. 661. Kelying 48.

5 Co. 110.

BE it enacted by this present Parliament, That if any felon or felons hereafter do rob or take away any money goods or chattles from any of the King's subjects from their person or otherwise within this realm and thereof the said felon or felons be indicted and after arraigned of the same felony and found guilty thereof, or otherwise attainted by reason of evidence given by the party so robbed or owner of the said money goods or chattles or by any other by their procurement, that then the party so robbed or owner shall be restored to his said money goods and chattles; and that as well the justices of gaol delivery as other justices afore whom any such felon or felons shall be found guilty or otherwise attainted by reason of evidence given by the party so robbed or owner or by any other by their procurement have power by this present Act to award from time to time writs of restitution for the said money goods and chattles in like manner as though any such felon or felons were attainted at the suit of the party in appeal.

[No. II.] 2 & 3 Philip and Mary, c. 7.—An Act against the buying of stolen Horses.

2 & 3 Phil. & M. c. 7.

11 H. 7. c. 13. Further Provisions relating hereto, 31 El. c. 12.

'FORASMUCH as stolen horses mares and geldings by thieves and 'their confederates be for the most part sold exchanged given or put 'away in houses stables back-sides and other secret and privy places of 'markets and fairs and the toll also privily paid for the same whereby 'the true owners thereof being not able to try the falshood and covin 'betwixt the buyer and seller of such horse mare or gelding is by the 'common law without remedy:'

In what manner Horses shall be sold in Fairs or Markets.

II. Be it therefore enacted by the authority of the present Parliament, That the owner governor ruler fermor steward bailiff or chief keeper of every fair and market overt within this realm and other the Queen's dominions shall before the feast of Easter next and so yearly appoint and limit out a certain and special open place within the town place field or circuit where horses mares geldings and colts have been and shall be used to be sold in any fair or market overt; in which said certain and open place as is aforesaid there shall be by the said ruler or keeper of the said fair or market put in and appointed one sufficient person or more to take toll and keep the same place from ten of the clock before noon until sun-set of every day of the aforesaid fair and market upon pain to lose and forfeit for every default forty shillings: and that every toll-gatherer his deputy or deputies shall during the time of every the said fairs and markets take their due and lawful tolls for every such horse mare gelding or colt at the said open place to be appointed as is aforesaid and betwixt the hours of ten of the clock in the morning and sun-set of the same day if it be tendred and not at any other time or place; and shall have presently before him or them at the taking of the same toll the

The former Misuse in Sale of stolen Horses.

A Place shall be appointed for a Horse-fair, and also a Toll-Taker.

When, where, and of whom, Toll for Horses shall be taken.

No. II. 2 & 3 P. & M. c. 7.

parties to the bargain exchange gift contract or putting away of every such horse mare gelding or colt; and also the same horse mare gelding and colt so sold exchanged or put away; and shall then write or cause to be written in a book to be kept for that purpose the names surnames and dwelling places of all the said parties and the colour, with one special mark at the least of every such horse mare gelding and colt; on pain to forfeit at and for every default contrary to the tenor thereof forty shillings.

A Note of all Horses sold in a Fair or Market.

III. And the said toll-gatherer or keeper of the said book shall within one day next after every such fair or market bring and deliver his said book to the owner governor ruler steward bailiff or chief keeper of the said fair or market who shall then cause a note to be made of the true number of all horses mares geldings and colts sold at the said market or fair and shall there subscribe his name or set his mark thereunto; upon pain to him that shall make default therein to lose and forfeit for every default forty shillings, and also answer the party grieved by reason of the same his negligence in every behalf.

The using of a stolen Horse in a Fair, or, &c. before the Owner's Property shall be taken away.

IV. And be it further enacted by the authority aforesaid, That the sale gift exchange or putting away after the last day of *February* now next coming in any fair or market overt of any horse mare gelding or colt that is or shall be thievishly stolen or feloniously taken away from any person or persons shall not alter take away nor exchange the property of any person or persons to or from any such horse mare gelding or colt unless the same horse mare gelding or colt shall be in the time of the said fair or market wherein the same shall be so sold given exchanged or put away openly ridden led walked driven or kept standing by the space of one hour together at the least betwixt ten of the clock in the morning and the sun-setting in the open place of the fair or market wherein horses are commonly used to be sold, and not within any house yard back-side or other privy or secret place, and unless all the parties to the bargain contract gift or exchange present in the said fair or market shall also come together and bring the horse mare gelding or colt so sold exchanged given or put away to the open place appointed for the toll-taker or for the book-keeper where no toll is due and there enter or cause to be entered their names and dwelling-places in manner as is aforesaid with the colour or colours and one special mark at the least of every the same horses mares geldings or colts in the toll-taker's book or in the keeper's book for that purpose where no toll is due as is aforesaid, and also pay him their toll if they ought to pay any; and if not then the buyer to give one penny for the entry of their names and executing the other circumstances afore rehearsed to him that shall write the same in the said book.

V. And if any horse mare gelding or colt that is or shall be thievishly stolen or taken away shall after the said last day of *February* next coming be sold given exchanged or put away in any fair or market, and not used in all points according to the tenor and intent of this estatute, that then the owner of every such horse mare gelding or colt shall and may by force of this estatute seise or take again the said horse mare gelding or colt or have an action of detinue or replevin for the same; any sale gift exchange or putting away of any such horse mare gelding or colt other than according to this estatute in any wise notwithstanding.

VI. The one half of all which forfeitures to be to the King and Queen's Majesties her heirs and successors, and the other to him or them that will sue for the same before the justices of peace or in any of the King's and Queen's Majesties ordinary courts of record by bill plaint action of debt or information, in which suits no protection essoin or wager of law shall be allowed.

The Justices of Peace shall hear and determine the Offences aforesaid.

VII. And be it enacted by the authority aforesaid, That the justices of peace of every place and county as well within liberties as without shall have authority in their sessions within the limits of their authority and commission to inquire hear and determine all offences against this estatute as they may do any other matter triable before them.

No. II. 2 & 3 P. & M. c. 7.

VIII. Provided always, That in every such fair or market where any toll is nor shall be due ne leviable by reason of the freedom liberty or privilege of the said fair or market the keeper or keepers of the book, touching the execution of this present Act, shall take nor exact but one penny upon and for every contract for his labour in writing the entry concerning the premisses in manner and form as is before declared.

The Allowance of the Keeper of the Book where no Toll is due.

[No. III.] 31 Elizabeth, c. 12.—An Act to avoid Horse stealing.

31 Eliz. c. 12. 11 H. 7. c. 13.

'WHEREAS through most counties of this realm horse-stealing is grown so common as neither in pastures or closes nor hardly in stables the same are to be in safety from stealing, which ensueth by the ready buying of the same by horse-coursers and others in some open fairs or markets far distant from the owner, and with such speed as the owner cannot by pursuit possibly help the same; and sundry good ordinances have heretofore been made touching the manner of selling and tolling of horses mares geldings and colts in fairs and markets which have not wrought so good effect for the repressing or avoiding of horse-stealing as was expected:'

Sellers of Horses in Fairs or Markets must be known to the Toll-taker, or some other who will avouch the Sale, which shall be entred in the Toll book, &c. 2 & 3 P. & M. c. 7.

Palmer 486. 487. 2 Inst. 713. Lutw. 197.

II. Now for a further remedy in that behalf, be it enacted by the authority of this present Parliament, That no person after twenty days next after the end of this session of Parliament shall in any fair or market sell give exchange or put away any horse mare gelding colt or filly unless the toll-taker there, or (where no toll is paid) the book-keeper bailiff or the chief officer of the same fair or market shall and will take upon him perfect knowledge of the person that so shall sell or offer to sell give or exchange any horse mare gelding colt or filly, and of his true christian name surname and place of dwelling or resiancy, and shall enter all the same his knowledge into a book there kept for sale of horses; or else that he so selling or offering to sell give exchange or put away any horse mare gelding colt or filly shall bring unto the toll-taker or other officer aforesaid of the same fair or market, one sufficient and creditable person that can shall or will testify and declare unto and before such toll-taker book-keeper or other officer, that he knoweth the party that so selleth giveth exchangeth or putteth away such horse mare gelding colt or filly, and his true name surname mystery and dwelling-place, and there enter or cause to be entered in the book of the said toll-taker or officer as well the true christian name surname mystery and place of dwelling or resiancy of him that so selleth giveth exchangeth or putteth away any such horse mare gelding colt or filly as of him that so shall testify or avouch his knowledge of the same person; and shall also cause to be entered the very true price or value that he shall have for the same horse mare gelding colt or filly so sold: and that no person shall take upon him to avouch, testify or declare that he knoweth the party that so shall offer to sell give exchange or put away any such horse mare gelding colt or filly, unless he do indeed truly know the same party, and shall truly declare to the toll-taker or other officer aforesaid, as well the christian name surname mystery and place of dwelling and resiancy of himself as of him of and for whom he maketh such testimony and avouchment: and that no toll-taker or other person keeping any book of entry of sales of horses in fairs or markets shall take or receive any toll, or make entry of any sale gift exchange or putting away of any horse mare gelding colt or filly, unless he knoweth the party that so selleth giveth exchangeth or putteth away any such horse mare gelding colt or filly, and his true christian name surname mystery and place of his dwelling or resiancy, or the party that shall and will testify and avouch his knowledge of the same person so selling giving exchanging or putting away such horse mare gelding colt

A sufficient and credible Person shall avouch the Horse-seller.

The Price of the Horse shall be entred in the Toller's Book.

No. III.
31 Eliz.
c. 12.

or filly, and his true christian name surname mystery and place of dwelling or resiancy, and shall make a perfect entry into the said book of such his knowledge of the person and of the name surname mystery and place of the dwelling or resiancy of the same person, and also the true price or value that shall be *bona fide* taken or had for any such horse mare gelding colt or filly so sold given exchanged or put away, so far as he can understand the same, and then give to the party so buying or taking by gift exchange or otherwise such horse mare gelding colt or filly, requiring and paying two-pence for the same, a true and perfect note in writing of all the full contents of the same subscribed with his hand; on pain that every person that so shall sell give exchange or put away any horse mare gelding colt or filly, without being known to the toll-taker or other officer aforesaid, or without bringing such a voucher or witness causing the same to be entred as aforesaid, and every person making any untrue testimony or avouchment in the behalf aforesaid, and every toll-taker book-keeper or other officer of fair or market aforesaid, offending in the premisses contrary to the true meaning aforesaid, shall forfeit for every such default the sum of five pounds; but also that every sale gift exchange or other putting away of any horse mare gelding colt or filly in fair or market, not used in all points according to the true meaning aforesaid, shall be void; the one half of all which forfeitures to be to the Queen's Majesty, her heirs and successors, and the other half to him or them that will sue for the same before the justices of peace or in any of her Majesty's ordinary courts of record by bill plaint action of debt or information; in which no essoin or protection shall be allowed.

A Note in Writing shall be given to the Buyer.

The Penalty of the Person offending in any of the Cases aforesaid.

1 Lutw. 197. Every Sale otherwise made shall be void.

III. And be it further enacted, That the justices of peace of every place and county as well within liberties as without shall have authority in their sessions within the limits of their authority and commission to enquire hear and determine all offences against this statute as they may do any other matter triable before them.

The Justices of Peace may hear and determine the Offences aforesaid.

IV. And be it further enacted, That if any horse mare gelding colt or filly after twenty days next ensuing the end of this session of Parliament shall be stolen, and after shall be sold in open fair or market, and the same sale shall be used in all points and circumstances as aforesaid, that yet nevertheless the sale of any such horse mare gelding colt or filly within six months next after the felony done, shall not take away the property of the owner from whom the same was stolen, so as claim be made within six months by the party from whom the same was stolen or by his executors or administrators, or by any other by any of their appointment at or in the town or parish where the same horse mare gelding colt or filly shall be found before the mayor or other head officer of the same town or parish, if the same horse mare gelding colt or filly shall happen to be found in any town corporate or market town, or else before any justice of peace of that county near to the place where such horse mare gelding colt or filly shall be found, if it be out of a town corporate or market town; and so as proof be made within forty days then next ensuing by two sufficient witnesses to be produced and deposed before such head officer or justice, (who by virtue of this Act shall have authority to minister an oath in that behalf) that the property of the same horse mare gelding colt or filly so claimed was in the party by or from whom such claim is made, and was stolen from him within six months next before such claim of any such horse gelding mare colt or filly; but that the party from whom the said horse mare gelding colt or filly was stolen his executors or administrators shall and may at all times after, notwithstanding any such sale or sales in any fair or open market thereof made, have property and power to have take again and enjoy the said horse mare gelding colt or filly upon payment or readiness or offer to pay to the party that shall have the possession and interest of the same horse mare gelding colt or filly, if he will receive and accept, so much money as the same party shall depose and swear before such head officer or justice of peace (who by virtue of this Act shall have authority to minister and give an oath in that behalf) that he paid for the same *bona fide* without fraud or collusion; any law statute or other thing to the contrary thereof in any wise notwithstanding.

The Owner may redeem a Horse stolen from him within six months after, paying the Price. Kelying 48.

No. III. 31 Eliz. c. 12.

V. And be it further enacted by the authority aforesaid, That after twenty days after the end of this session of Parliament, not only all accessaries before such felony done, but also all accessaries after such felony, shall be deprived and put from all benefit of their clergy, as the principal by statute heretofore made is or ought to be.

An Accessary to a Horse-stealer shall not have his Clergy. 1 E. 6. c. 12. 2 & 3 E. 6. c. 33.

[No. IV.] 1 James I. c. 21.—An Act against Brokers.

1 James I. c. 21.

'FORASMUCH as of long and ancient time by divers hundred years there have been used within the city of *London* and liberties thereof certain freemen of the city, to be selected out of the companies and mysteries whereof they are free and members, and the same persons to be presented at least by six approved and known honest persons of the same mystery to the Lord Mayor of *London* for the time being and to the aldermen his brethren, and to be recommended by such presentors to be persons for their known approved honesty integrity and faithfulness persons meet for to be broker or brokers, and upon such relation made to the mayor and aldermen and partly by their own knowledge and diligent enquiries made of the said persons and of their honest fame report fidelity and skill, have been thereupon admitted allowed and approved by the lord mayor of the city and aldermen in the court of aldermen to be brokers within the said city and liberties of the same, and have taken their corporal oaths before the said mayor and aldermen from time to time as they were so presented and admitted to use and demean themselves uprightly and faithfully between merchant *English* and merchant strangers and tradesmen in the contriving making and concluding bargains and contracts to be made between them concerning their wares and merchandizes to be bought and sold and contracted for within the city of *London*, and monies to be taken up by exchange between such merchant and merchants and tradesmen; and these kind of persons so presented allowed and sworn to be brokers as aforesaid, have had and borne the name of brokers and been known called and taken for brokers and dealing in brokage or brokery; (2.) who never of any ancient time used to buy and sell garments houshold stuff or to take pawns and bills of sale of garments and apparel, and all things that come to hand for money laid out and lent upon usury, or to keep open shops and to make open shews and an open trade, as now of late years hath and is used by a number of citizens assuming unto themselves the name of brokers and brokerage, as though the same were an honest and lawful trade mystery or occupation terming and naming themselves brokers, whereas in truth they are not, abusing the true and honest ancient name and trade of broker or brokerage.

The Manner to present and allow of Brokers in London. Stat. Civ. Lond. 13 E. 1. St. 5.

The Differences between ancient and present Brokers.

II. 'And forasmuch as many citizens freemen of the city being men of manual occupations and handicraftsmen and others inhabiting and remaining near the city and suburbs of the same, have left and given over and daily do leave and give over their handy and manual occupations, and have and daily do set up a trade of buying and selling, and taking to pawn of all kind of worn apparel, whether it be old or little the worse for wearing, houshold stuff and goods of what kind soever the same be of, finding thereby that the same is a more idle and easier kind of trade of living, and that there ariseth and groweth to them a more ready more great more profitable and speedier advantage and gain than their former manual labour and trades did or could bring them:

The Abuse of Brokerage in these later Years.

III. 'And forasmuch as the said kind of counterfeit brokers and pawntakers upon usury or otherwise for ready money are grown of late to many hundreds within the City of *London* and other places next adjoining to the city and liberties of the same, and are like to increase to far greater multitudes, being fripperers and no brokers nor exercising of any honest and lawful trade, and within the memory of many yet living such kind of persons tradesmen were very few and of small number:

Fripperers and no Brokers.

No. IV.
1 James I.
c. 21.

IV. 'And forasmuch as there are not any garments apparel houshold 'stuff or other goods of any kind whatsoever the same be of, either 'being stolen or robbed from any or badly or unlawfully purloined or 'come by, but these kind of upstart brokers under colour and pretence 'they be freemen of the said City of *London* or inhabiting in *Westminster*, 'where they pretend to have the like overt market as the City of *London*, 'and thereby presuming to be lawful for them to use and set up the 'same idle and needless trades, being the very means to uphold main- 'tain and embolden all kind of bad and lewd persons to rob and steal, 'and unlawfully to get and come by true mens goods, knowing and 'finding that no sooner the same goods can be stolen or unlawfully 'come by, but that they shall and may presently utter vent sell and 'pawn the same to such kind of new upstart brokers for ready money: '(2.) For remedy whereof and for the avoiding of the said mischiefs and 'inconveniences and for repressing and abolishing of the same idle and 'needless trades and upstart brokers, and for the avoiding of thefts rob- 'beries and felonies and bad people, and for the repressing of such kind 'of nourishers and aiders of thieves and bad people, and for the defence 'of honest and true mens properties and interests in their goods:'

By what Means upstart Brokers come by their Goods.

Inconveniencies ensuing by upstart Brokers.

V. Be it enacted and declared by our Sovereign Lord the King, with the assent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That no sale exchange pawn or mortgage of any jewel plate apparel houshold stuff or other goods of what kind nature or quality soever the same shall be of, and that shall be wrongfully or unjustly purloined taken robbed or stolen from any person or persons or bodies politick, and which at any time hereafter shall be sold uttered delivered exchanged pawned or done away within the city of *London* or liberties thereof or within the city of *Westminster* in the county of *Middlesex* or within *Southwark* in the county of *Surrey* or within two miles of the said city of *London*, to any broker or brokers or pawn-takers, by any way or means whatsoever directly or indirectly shall work or make any change or alteration of the property or interest of and from any person or persons or body politick from whom the same jewels plate apparel houshold stuff or goods were or shall be wrongfully purloined taken robbed or stolen; any law usage or custom to the contrary notwithstanding.

The Sale of Goods wrongfully gotten shall not alter the Property of them. Kelyng 50.

VI. And for the better maintaining of true honest dealing, and for the eschewing and avoiding of falsehood fraud and deceit in such kind of brokers and pawn-takers:

VII. Be it furthermore enacted and established by the like authority, That if any person or persons or bodies politick from whom any jewels plate apparel houshold stuff or any kind of goods whatsoever shall be wrongfully purloined taken stolen or robbed, shall require and demand of any such broker or pawn-taker to declare whether any such goods be come to his or their possessions, and to declare shew and manifest the same, and how and by what means he had them or came by the same, and how when and to whom he hath delivered conveyed or bestowed and employed the same; and that such broker upon any such request and demand to be made shall deny and refuse to disclose tell or manifest the same truly and justly, shall forfeit unto the true owner or owners of such jewels plate apparel houshold stuff and other goods, from whom the same were wrongfully purloined taken stolen or robbed, double the value thereof that shall be denied and refused to be disclosed told and manifested as aforesaid; the same double value to be recovered by the true owner or owners of such goods from whom the same were wrongfully purloined taken robbed or stolen, to be recovered by action of debt bill or plaint in any of the King's Majesty's courts of record at *Westminster* or within the city of *London*, in which no essoin wager of law or protection shall be allowed.

A Broker upon Request shall declare what Goods be come to his Hands.

VIII. Provided always, That this Act nor any thing therein contained shall not be prejudicial or hurtful to the ancient trade of brokers within the city of *London*, using and exercising the ancient trade of brokers between merchant and merchant or other traders or occupiers within the said city and the liberties of the same being selected as aforesaid.

PART III.

CLASS XIII.

Executors and Administrators.

[No. I.] 9 Henry III. c. 18.—(Magna Charta.)—The King's Debtor dying, the King shall be first paid.

9 H. III. c. 18. Rast. Ent. f. 541. Co. Ent. f. 564. Fitz. Detinue, 52. 56. 58. 60. Bro. Ration. 2. 5, 6. 2 Inst. 32.

'IF any that holdeth of us layfee do die and our sheriff or bailiff do shew our letters patents of our summon for debt which the dead man did owe to us; it shall be lawful to our sheriff or bailiff to attach and inroll all the goods and chattles of the dead being found in the said * fee to the value of the same debt by the sight † *and testimony* of lawful men, so that nothing thereof shall be taken away until we be clearly paid off the debt; (2.) and the residue shall remain to the executors to perform the testament of the dead; (3.) and if nothing be owing unto us all the chattles shall go to the use of the dead (saving to his wife and children their reasonable parts.)

* Add *Lay.*
† *Not in Orig.* Supra, c. 8.

[No. II.] 13 Edward I. St. 1. (Westminster 2.) c. 19.—The Ordinary chargeable to pay Debts as Executors.

13 Ed. I. St. 1. c. 19. Dyer 232. 5 Co. 83. Fitz. Brief, 822. Fitz. Execut. 77.

'WHEREAS after the death of a person dying intestate which is bounden to some other for debt the goods come to the ordinary to be disposed; (2.) the ordinary from henceforth shall be bound to answer the debts as far forth as the goods of the dead will extend in such sort as the executors of the same party should have been bounded if he had made a testament.'

[No. III.] 13 Edward I. St. 1. (Westminster 2.) c. 23.—Executors may have a Writ of Accompt.

13 Ed. III. St. 1. c. 23. 2 Inst. 404.

'EXECUTORS from henceforth shall have a writ of accompt, and the same action and process in the same writ as the testator might have had if he had lived.'

Fitz. Executors, 97. 4 Ed. 3. c. 7.

[No. IV.] 4 Edward III. c. 7.—Executors shall have an Action of Trespass for a Wrong done to their Testator.*

4 Ed. III. c. 7. Rast. 640. 13 Ed. 1. St. 1. c. 23. 1 Ventr. 187. 7 H. 4. f. 18. 11 H. 4. 3.

"ITEM, Whereas in times past executors have not had actions for a trespass done to their testators as of the goods and chattels of the same testators carried away in their life and so such trespasses have hitherto remained unpunished;" 'It is enacted, That the executors in such cases shall have an action against the trespassers and recover their damages in like manner as they whose executors they be should have had if they were in life.'

Fitz. Bar. 217.- Fitz. Execut. 52. 106. Cro. El. 377. 384. Latch. 167.

* In Emerson *v.* Emerson, 1 Vent. 187. the declaration was, that the defendant, *bladа crescentia* upon the freehold of the testator, *niensuit defalcavit cepit et asportavit*, And on error it was ob-

jected, that it is a trespass to the freehold, for which the statute gives no action, and that as entire damages were given, as well for cutting as the carrying away, the judgment was erroneous, but all the court were of another opinion; for it is but one entire trespass, the declaration only describes the manner of taking it away. Indeed, if it had been *quare clausum fregis et blada asportavit*, it had been nought, or if he had cut the corn, and let it lie, no action would have lain for the Executor. So if the grass of the testator be cut and carried away at the same time, because the grass is part of the freehold, but corn standing is a chattel.—The stat. of 4 Edward 3. hath been always expounded largely.

In Russell *v.* Pratt, cited Anders. 243. it was held that an Executor might maintain *ejectione firmæ*, as the testator had been wrongfully ousted of his chattel.—In Sale *v.* Sale, Anders 241 R. that an Executor shall have *quare impedit* for a disturbance in the life time of the testator.

Debt on stat. 2 Edward 5. for not setting out Tythes—Holl *v.* Bradford, Sid. 88.—Morton *v.* Hopkins, id. 407.

On Devastavit.—Berwick *v.* Andrews, 1 Salk. 314.

For an escape of one taken in Execution. Dyer 322.—Vi. Lord Raym. 40.—1 Lord Raym. 273. Query, as to mesne process, 1 Rol. 912.

For false return on *fieri facias*, Williams *v.* Grey.—1 Lord Raym. 40.—1 Salk 12.

On stat. 8 Anne, c. 17. for removing goods without paying a year's rent.—Pulgrave *v.* Windam, 1 Str. 212.

For other cases see Com. Dig. Administration, B. 13.

[No. V.] 25 Edward III. St. 5. c. 5.—Executors of Executors shall have the Benefit and Charge of the first Testator.

'ITEM it is accorded and stablished, That executors of executors shall have actions of debts accompts and of goods carried away of the first testators and execution of statutes merchants and recognizances made in court of record to the first testator in the same manner as the first testator should have had if he were in life, as well of actions of the time past as of the time to come in all cases where judgment is not yet given betwixt such executors *of executors*; but that the judgments given to the contrary to this article in times past shall stand in their force; and that the same executors of executors shall answer to other of as much as they have recovered of the goods of the first testators as the first executors should do if they were in full life.'* 25 Ed. III. St. 5. c. 5. 13 Ed. 1. St. 1. c. 23. Plowd. 286. Fitz. Covenant, 24. Fitz. Execut. 92. 103. 110. 120.

* The executor of the executor of J. S. may be named directly an executor of J. S. 1 Leon 275.

[No. VI.] 31 Edward III. St. 1. c. 4.—Redressing of Extortion in Bishops' Officers in proving Wills.

"ITEM, Whereas the ministers of bishops and other ordinaries of holy church take of the people grievous and outrageous fine for the probate of testaments and for the making of acquittances thereof;" 'the King hath charged the Archbishop of *Canterbury* and the other bishops that they cause the same to be amended; and if they do not it is accorded, That the King shall cause to be inquired by his justices of such oppressions and extortions to hear them and determine them as well at the King's suit as at the suit of the party as in old time hath been used.' 31 Ed. III. St. 1. c. 4.

[No. VII.] 31 Edward III. St. 1. c. 11.—To whom the Ordinary may commit the Administration of the Goods of him that dieth intestate. The Benefit and Charge of an Administrator.*

'ITEM it is accorded and assented, That in case where a man dieth intestate the ordinaries shall depute the next and most lawful friends 31 Ed. III. St. 1. c. 11.

* The Ordinary is bound to grant Administration to the husband of the effects of his wife, except as to cases where the wife is specifically empowered to make a Will, and appoint an Executor. And in case of a limited probate granted to the Executor of a married woman, the husband

No. VII. 31 Edw. III. st. 1. c. 11.

'of the dead person intestate to administer his goods; (2.) which deputies shall have an action to demand and recover as executors the debts due to the said person intestate in the King's court for to administer and dispend for the soul of the dead; (3.) and shall answer also in the King's court to other to whom the said dead person was holden and bound in the same manner as executors shall answer. (4.) And they shall be accountable to the ordinaries as executors be in the case of testament as well of the time past as the time to come.'

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is intitled to Administration of the other part of her property, which is called *Administration Ceterorum*. The husband is intitled to Administration unless by some Act he has excluded himself.—Rex *v.* Bettersworth, 2 Str. 1118.

Administration may be granted as to some goods to the wife, and as to others to the next of kin; but separate Administrations cannot be granted of an entire thing, as a debt.—Fawtry *v.* Fawtry, 1 Salk. 36. As to the degrees of kindred, see Notes to the Statute of Distributions, 22 & 23 Chas. 2. c. 10. post No. 15.

The whole blood has not any preference to the half, in respect of the rights of Administration, any more than in case of distribution.

If Administration is granted to one not next of kin, it is not void, but voidable only.—Blackborough *v.* Davies, 1 Salk. 38.

Administration cannot be granted to a feme covert, without the permission of her husband, except he is abroad, or otherwise incompetent, in which case a stranger may give the proper security in his stead. The Administration is committed to the wife alone, and not to her jointly with her husband, otherwise if he survived her, he would be Administrator contrary to the meaning of the Act.—11 Viner, Abr. 85.—4 Burn Ec. L. 241.—Com. Adm. D. Styles, 75. [But query, if it may not be so granted when the wife is the sole next of kin.

A party otherwise intitled to administer, may be disqualified by reason of attainder for treason or felony, outlawry, imprisonment, absence beyond sea, bankruptcy, insanity, or other legal disability. As the statute directs the Administration to be granted to the next and most lawful friends, but alienized is not an incapacity. See 9 Co. 39. 1 Salk 36. Cro. Car. 9. 1 Brownl. 31. 2 Veni. 126.

Administration de bonis non, or *Cum Testamento annexo*, need not be granted to the next of kin.—1 Ventr. 219; but the Spiritual Court is not compellable to grant Administration with the Will annexed to the residuary legatee.—Rex *v.* Bettersworth, 2 Str. 956.

Administration durante Minor etate, need not be granted to the next of kin.—Hob. 250.—Smith's Case, 2 Str. 892.

[No. VIII.] 9 Henry VI. c. 4.—An *Idemptitate nominis* maintainable by Executors, &c.

9 Hen. VI. c. 4. 2 Hen. V. c. 5.

"ITEM, For that before this time many outlawries have been pronounced against divers of the King's liege people as well before "the statute of additions made at *Westminster* the first year of King "*Henry* the Fifth, father to our Lord the King that now is, as sithence "in respect of which outlawries the bodies of other persons having such "and like names as they had which were outlawed indeed have been "taken and imprisoned and their goods and chattles for this cause seised

37 Edw. III. c. 2. Rast. 407.

"by the escheators of the King and of his noble progenitors: and al"though that by the common law of the realm a writ of *Idemptitate no*"*minis* hath been maintainable for the same person which in the form "aforesaid was molested and grieved; nevertheless if any person of the "said lieges having like name as any other person of the same liege "people which was outlawed in deed had made his executors and died, "often it happened that by malice and subtil imaginations the goods and "chattles of such testator which had the same name as he had which "was outlawed in deed were seised and escheated to the hands of our "Lord the King and of his progenitors in retardation of the execution of "the testament of every such testator for the doubt which hath been "whether any executors may by the common law have a writ of *Idem*"*ptitate nominis* or not." 'Wherefore to take away and remove all such ambiguities and doubts in this case hereafter of the assent and advice aforesaid and at the special request of the said Commons it is ordained and established by authority of this Parliament, That a writ of *Idemptitate nominis* be granted and made good and maintainable for the executors of every testator to the same effect that the same action of *Idemptitate nominis* was maintainable before this Parliament for any person

An Idemptitate nominis maintainable by the Executors of a Testator wrongfully molested by colour of any Outlawry.

'himself which was or might have been molested or grieved because or 'by colour of any such outlawry. And that this ordinance shall have 'relation and force by authority aforesaid for the executors of every testa- 'tor as well of every outlawry pronounced against any person at any time 'before this Parliament as of all manner of outlawries to be pronounced 'against any person in time to come.'

No. VIII. 9 Hen. VI. c. 4.

Regist. 194.

[No. IX.] 33 Henry VI. c. 1.—A Remedy for Executors against Servants that imbezzle their Master's Goods after his Death.

"FIRST, our foresaid Lord the King considering how that of late time "divers houshold-servants as well of lords as of other persons of "good degree shortly after the death of their said lords and masters vio- "lently and riotously have taken and spoiled the goods which were of "their said lords and masters at the time of their death and the same "distributed amongst them to the impediment of the execution of the "will of their said lords and masters and to the great displeasure of "God, and also contrary to the duty and truth which they ought to have "had towards their said lords and masters and to a perilous example in "time to come, unless due remedy in this behalf be provided."—'Where- 'fore the same Lord the King, by the advice assent and authority afore- 'said hath ordained and established, That after full information made 'to the Chancellor of *England* for the time being, by the executors of 'any such lord or person or two of the said executors of such riot taking 'and spoil made or hereafter to be made by the houshold-servants of 'their or his said testator after his death, the same Chancellor, by the 'advice of the Chief Justices of the King's Bench and of the Common 'Bench and Chief Baron of the Exchequer for the time being or two of 'them, shall have power to make so many and such writs to be directed 'to such sheriffs by their discretion as to them in this behalf shall seem 'necessary to make open proclamation in such cities boroughs towns or 'places two market-days within twelve days next after the delivery of 'the same writs as to the same Chancellor, by the advice aforesaid, shall 'seem reasonable, That the said offenders shall appear before the same 'our Lord the King or his heirs in his bench at such a day as by the said 'writ shall be limited, so that the said last proclamation be made by 'fifteen days before the same day of appearance; and if any such writ 'be returned at the day contained in the said writ and the writ be exe- 'cuted that proclamation is thereupon had and made according to the 'said ordinance, and then if the said person or persons which should ap- 'pear by reason of the said proclamation make default at the day speci- 'fied in the said writ and do not appear then he or they so making de- 'fault shall be attainted of felony.'

33 Henry VI. c. 1. 3 Inst. 104. Qu. If in use? See 33 H. VI. c. 7. Rast. Ent. 29. c.

II. 'And if any such persons or person do appear at the same day then 'the Justices of the said King's Bench shall have power by the said ordi- 'nance to commit such person or persons so appearing to prison there to 'remain according to the said justices discretion, until the said offenders 'in the said bench do answer to the said executors in such actions which 'the said executors will declare against them or any of them by bill or 'by writ for the riot, taking and spoiling aforesaid and that the same 'actions be determined; so that the same actions be pursued with ef- 'fect and not slackly to the intent to keep the same person or persons in 'prison'

III. 'And if such persons or person be set at liberty out of prison by 'the said justices that then the same persons or person shall find suffi- 'cient persons to be bounden with them to the said executors by way of 'recognisance in the said bench by discretion of the justices to keep such 'days as he or they shall have by the same court; and if the keepers of 'the prison whereunto the said person or persons be committed do let 'them go at large out of the prison of his own authority without the con- 'sideration and order of the said justices, then the said keeper shall for-

A Gaoler's Forfeiture for setting at Liberty a Prisoner committed to his Custody by Force of this Statute.

No. IX. 33 Hen. VI. c. 1.

'feit and lose forty [*four hundred*] pounds to the said executors; and 'that no protection be allowed in any action to be taken upon the said 'ordinance.'

[No. X.] 21 Henry VIII. c. 4.—The Sale of Lands by Part of the Executors lawful.

[Inserted ante Part II Class I. No. XI.]

[No. XI.] 21 Henry VIII. c. 5.—What Fees ought to be taken for Probate of Testaments.

21 Henry VIII. c. 5. 31 Ed. 3. Stat. 1. c. 4. Latch. 68.

'WHERE in the Parliament holden at *Westminster* in the thirty-first 'year of the reign of the noble King of famous memory *Edward* 'the Third, upon the complaint of his people for the outrageous and 'grievous fines and sums of money taken by the ministers of bishops 'and of other ordinaries of holy church for the probate of testaments 'and for the acquittances by the said ordinaries to be made concerning 'the same, the said noble King in the same Parliament openly charged 'and commanded the Archbishop of *Canterbury* and the other bishops 'for the time being that amendment thereof should be had; and if none 'amendment were thereof had, it was by the authority of the same Par-'liament accorded, That the King should thereof make inquiry by his 'justices of such oppression and extortions; and that the same justices 'should hear and determine them as well at the suit of the King as of 'the party as of old time hath been used as by the same statute plainly 'appeareth. And where at the Parliament holden at *Westminster* in the 3 H. 5. c. 8. 'third year of the reign of King *Henry* the Fifth, it was recited, That the 'Commons of the realm had oftentimes complained them in divers Par-'liaments for that divers ordinaries do take for the probation of testa-'ments and other things thereunto belonging sometime xl. s. sometime 'lx. s. and sometimes more against right and justice, where in the time 'of King *Edward* the Third men were wont to pay for such causes but 'ii. s. vi. d. or v. s. at the most by which unlawful exactions the testa-'ments of the testators might not be executed according to their last 'wills; it was then enacted for the avoiding of such oppressions, That 'no ordinary from thenceforth should take for the probation of any testa-'ment or inventory or for any other thing to the same belonging any 'more than was accustomed and used in the time of the said noble King 'Edward the Third, upon pain to yield to the party so grieved three times 'as much as the said ordinaries did so receive; which Act did endure 'but to the next Parliament following by reason that the ordinaries did 'then promise to reform and amend the said oppressions and exactions; 'and for that the said unlawful exactions of the said ordinaries and their 'ministers be nothing reformed nor amended, but greatly augmented 'and increased against right and justice and to the great impoverishing 'of the King's subjects:'

The Ordinaries Duties for Probate of Testaments in the Time of King Edw. 3.

4 Inst. 336. The Fees for Probate of a Testament, where the Goods exceed not the Value of C. s.

II. The King our Sovereign Lord, by the assent of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, and by the authority of the same, hath ordained established and enacted, That from the first day of *April* in the year of our Lord *M.D.XXX.* that nothing shall be demanded received nor taken by any bishop ordinary archdeacon chancellor commissary official or any other manner of person or persons whatsoever they be which now have or which at any time hereafter shall have authority or power to take or receive probation insinuation or approbation of testament or testaments by himself or themselves nor by his or their registers scribes praisers summoners apparators or by any other of their ministers for the probation insinuation and approbation of any testament or testaments, or for writing sealing praising registering fines making of inventories and of giving acquittances or for any other manner of cause concerning the same where the goods of the testator of the said testament or person so dying do not amount clearly over and

No. XI.
21 H. VIII.
c. 5.

above the value of *c. s.* sterling, except only to the scribe to have for writing of the probate of the testament of him deceased whose goods shall not be above the same clear value of *c. s. vi. d.* and for the commission of administration of the goods of any man deceasing intestate not being above like value of *c. s.* clear *vi. d.* and that nevertheless the bishop ordinary or other person or persons having power or authority to take or receive the probation or approbation of testaments refuse not to approve any such testament being lawfully tendered or offered to them to be proved or approved, whereof the goods of the testator or person so dying amount not above the value of *c. s.* sterling, so that the said testament be exhibited to him or them in writing with wax thereunto affixed ready to be sealed, and that the same testament be lawfully proved before the same ordinary (before the sealing) to be true whole and the last testament of the same testator in such form as hath been commonly accustomed in that behalf.

Commission of Administration where the Goods exceed not the Value of C. s.

III. And when the goods of the testator do amount over and above the clear value of *c. s.* and do not exceed the sum of *xl. li.* sterling; that then no bishop ordinary nor other manner of person or persons whatsoever he or they be now having or which hereafter shall have authority to take probation or approbation of any testament or testaments as is aforesaid by themselves nor any of their said registers scribes praisers summoners apparators nor any other their ministers for the probation insinuation and approbation of any testament or testaments or for the registring sealing writing praising making of inventories giving of acquittances fines or any other thing concerning the same shall take or cause to be taken of any person or persons but only three shillings *vi. d.* and not above, whereof to be to the said bishop or ordinary or to any other person or persons having power and authority to take the probation or approbation of any testament or testaments for him and his ministers *ii. s. vi. d.* and not above, and *xii. d.* residue of the said *iii. s. vi. d.* to be to the scribe for the registring of the same; and where the goods of the testator or person or persons so dying do amount over and above the clear value of *xl. li.* sterling, that then the bishop nor ordinary nor other person or persons now having or which hereafter shall have authority or power to take probate of testaments as is aforesaid by him or themselves nor any of his or their said registers scribes praisers summoners apparators or any other their ministers for the probation insinuation and approbation of any testament or testaments, or for the registring sealing writing praising making of inventories fines giving of acquittances or any thing concerning the same probate of a testament shall from the first day of *April* take or cause to be taken of any person or persons but only *v. s.* and not above, whereof to be to the said bishop ordinary or other person having power to take the probation of such testament or testaments for him and his ministers *ii. s. vi. d.* and not above, and *ii. s. vi. d.* residue of the said *v. s.* to be to the scribe for registring of the same or else the same scribe to be at his liberty to refuse those *ii. s. vi. d.* and to demand and have for writing of every ten lines of the same testament whereof every line to contain in length ten inches, *i. d.* and that every such bishop or ordinary and other person or persons so having or which hereafter shall have authority or power to take or receive the probation or approbation of any testament or testaments as is abovesaid their registers scribes and ministers shall approve insinuate seal and register from time to time the said testaments and deliver the same sealed with the seal of their office to the executor or executors named in any such testaments for the said sum or sums abovesaid and in manner and form as is above rehearsed to deliver it with convenient speed without any frustratory delay; and in case any person die intestate or that the executors named in any such testament refuse to prove the said testament, then the said ordinary or other person or persons having authority to take probate of testaments as is abovesaid shall grant the administration of the goods of the testator or person deceased to the widow of the same person deceased or to the next of his kin or to both as by the discretion of the same ordinary shall be

The Fees of the Probate of a Testament, where the Goods do exceed c. s. and not xl. li.

2 Roll. 153. 263. 449.

The Fees of the Probate of a Testament, where the Goods do exceed xl. li.

Testaments shall be sealed and delivered without delay.

Hob. 250.

Administration granted of the Goods of the Intestate.

1 Salk. 36. Moore 871. pl. 1210. Bro. Admin, 47. 3 Co. 40. 9 Co. 39. Cro. El. 163. Cro. Car. 9. 106.

No. XI. 21 H. VIII. c. 5.

thought good, taking surety of him or them to whom shall be made such commission for the true administration of the goods chattels and debts which he or they shall be so authorised to minister; and in case where divers persons claim the administration as next of kin which be equal in degree of kindred to the testator or person deceased, and where any person only desireth the administration as next of kin where indeed divers persons be in equality of kindred as is aforesaid, that in every such case the ordinary to be at his election and liberty to accept any one or mo making request where divers do require the administration.*

To whom Administration shall be granted.

IV. Or where but one or more of them, and not all being in equality of degree, do make request, then the ordinary to admit the widow and him or them only making request or any one of them at his pleasure, taking nothing for the same unless the goods of the persons so deceased amount above the value or sum of *c. s.* and in case the goods of the person so deceased amount to above the value of *c. s.* and not above the value or sum of *xl. li.* then the said bishop ordinary or other person or persons so having authority to take probate of testaments as is aforesaid, their ministers and officers shall take only *ii. s. vi. d.* sterling and not above; and that the executor and executors named by the testator or person so deceased or such other person or persons to whom such administration shall be committed where any person dieth intestate or by way of intestate, calling or taking to him or them such person or persons, two at the least, to whom the said person so dying was indebted or made any legacy, and upon their refusal or absence two other honest persons being next of kin to the person so dying, and in their default and absence two other honest persons, and in their presence and by their discretions shall make or cause to be made a true and perfect inventory of all the goods chattels wares merchandises as well moveable as not moveable whatsoever, that were of the said person so deceased, and the same shall cause to be indented, whereof the one part shall be by the said executor or executors administrator or administrators, upon his or their oath or oaths to be taken before the said bishops or ordinaries their officials or commissaries or other persons having power to take probate of testaments upon the Holy Evangelists to be good and true, and the same one part indented shall present and deliver into the keeping of the said bishop ordinary or ordinaries or other person having power to take probate of testaments, and the other part thereof to remain with the said executor or executors administrator or administrators; and that no bishop ordinary or other whatsoever person having authority to take probate of testament or testaments as is abovesaid, upon the pain in this estatute hereafter contained, refuse to take any such inventory or inventories to him or them presented or tendered to be delivered as is aforesaid.

How much the Ordinary shall take. 3 Inst. 148.

Inventory, by whom it shall be made, &c. 1 Roll. 358. See 3 Bur. 1923.

V. Provided always, That if the person so deceased will by his testament or last will any lands tenements or hereditaments to be sold, that the money thereof coming nor the profits of the said lands for any time to be taken, shall not be accounted as any of the goods or chattels of the said person so deceased; and that the same bishop ordinary or other person or persons having authority to take probate of testament or testaments as is aforesaid, upon the delivery of the seal and sign of the testator do cause the same seal to be defaced, and thereupon incontinent redeliver the same seal unto the said executor or executors without claim or challenge thereunto to be made. And in case any person or persons at any time hereafter require a copy or copies of the said testament so proved, or of the said inventories so made, that then the said ordinary or ordinaries and the other persons having authority to take probate of testaments or their ministers shall from time to time with convenient speed without any frustratory delay deliver or cause to be delivered a true copy or copies of the same to the said person or persons so demanding them or any of them, taking for the search and for the making of the copy of either of the said testament or inventory but only such fee as is before rehearsed for the registring of the said testament; or else the

Profits of Lands to be sold shall not be accounted the Testator's Goods. Dyer 264. 310. Fitz. Exec. 1. 37. 51.

The Testator's Seal shall be defaced.

Fee for Search and Copies.

* See Notes to No. 4, *supra*.

scribe or register to be at his election and liberty to demand have and take for every ten lines thereof, being of the proportion before rehearsed, *i d.*

No. XI. 21 H. VIII. c. 5.

VI. Provided alway, That where any person or persons having power or authority to take probate of testaments have used to take less sums of money than is abovesaid for the probate of testaments or commissions of administrations or other cause concerning the same, shall take and receive such sum or sums of money for the probate of testaments and commissions of the administrations and other causes concerning the same, as they before the making of this Act have used to take and not above.

Custom to take less Money for Probate than is aforesaid.

VII. And it is enacted, That every bishop ordinary archdeacon chancellor commissary official and other person or persons having or which hereafter shall have authority to take probate of testaments, their registers scribes praisers summoners apparators and all other their ministers whatsoever they be that shall do or attempt or cause to be done or attempted against this Act or ordinance in any thing shall forfeit and lose for every time so offending to the party grieved in that behalf so much money as any such person abovesaid shall take contrary to this present Act; and over that shall lose and forfeit *x li.* sterling; whereof the one moiety shall be to the King our Sovereign Lord, and the other moiety to the party grieved in that behalf that will sue by action of debt bill information or otherwise in any of the King's courts for the recovery of the same; in which action no essoin protection nor wager of law shall be admitted or allowed. And that every of the same bishops and other persons which shall hereafter incur or fall into the dangers of such penalty or forfeiture shall be charged only by himself and none of them to be chargeable to that penalty for other's offence.

Forfeiture of the Ordinary, &c.

Co. pl. f. 166. Rast. pl. f. 603

VIII. Provided alway, That this present Act be not prejudicial to any ordinary or any other person which now have or hereafter shall have authority for probate of testaments, but that every of them shall and may convent before them all and every person or persons made and named executor or executors of any testament to the intent to prove or refuse the testament or testaments of their testator or testators, and to bring in inventories and to do every other thing concerning the same, as they might do before the making of this Act; so that always any such ordinary or other person or persons having such authority by themselves their commissaries scribes registers or other ministers aforesaid, shall not in any wise take for the same above the fees limited by this Act, ne in any wise attempt any thing contrary to any part of the same Act.

An Ordinary may convent Executors to prove the Testator's Will, and to bring in their Inventary.

[No. XII.] 32 Henry VIII. c. 37.—For Recovery of Arrearages of Rents by Executors of Tenant in Fee-simple.

[Inserted Part IV. Class XIX.]

[No. XIII.] 43 Elizabeth, c. 8.—An Act against fraudulent Administration of Intestates Goods.

43 Eliz. c. 8.

Fraud practised in taking of Administrations to deceive others of their lawful Debts.

'FORASMUCH as it is often put in ure to the defrauding of creditors, that such persons as are to have the administration of the goods of 'others dying intestate committed unto them, if they require it will not 'accept the same, but suffer or procure the administration to be granted 'to some stranger of mean estate, and not of kin to the intestate, from 'whom themselves or others by their means do take deeds of gifts 'and authorities by letter of attorney, whereby they obtain the state of 'the intestate into their hands, and yet stand not subject to pay any 'debts owing by the same intestate, and so the creditors for lack of 'knowledge of the place of habitation of the administrator, cannot arrest 'him nor sue him; and if they fortune to find him out, yet for lack of 'ability in him to satisfy of his own goods for the value of that he hath

No. XIII. 43 Eliz. c. 8.

'conveyed away of the intestate's goods or released of his debts by way 'of wasting, the creditors cannot have or recover their just and due 'debts.'

By fraudulent Administration of Intestates Goods, the Party shall be charged as Executor of his own wrong.

II. Be it enacted by the authority of this present Parliament, That every person and persons that hereafter shall obtain receive and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate upon any fraud as is aforesaid, or without such valuable consideration as shall amount to the value of the same goods or debts or near thereabouts, (except it be in or towards satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the intestate at the time of his decease) shall be charged and chargeable as executor of his own wrong; and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator will satisfy,

Allowance of just Debts and other lawful Payments.

deducting nevertheless to and for himself allowance of all just due and principal debts upon good consideration without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him which lawful executors or administrators may and ought to have and pay by the laws and statutes of this realm *.

* This Statute does not give an executor *de son tort*, power to retain.—Semble Vernon *v.* Curtis, 2 H. B. 26, *n.*

[No. XIV.] 17 Charles II. c. 8.—An Act for avoiding unnecessary Suits and Delays.

[Inserted Part IV. Class XII.]

[No. XV.] 22 & 23 Charles II. c. 10. (6.)—An Act for the better Settling of Intestate Estates.

22 & 23 Car. II. c. 10.

BE it enacted by the King's most excellent Majesty, with the advice and consent of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, and by the authority of the same,

All Ordinaries who have power to grant Administrations, have power to take Bond. Vaughan 96.

That all ordinaries as well the judges of the Prerogative Courts of *Canterbury* and *York* for the time being as all other ordinaries and ecclesiastical judges and every of them having power to commit administration of the goods of persons dying intestate, shall and may upon their respective granting and committing of administration of the goods of persons dying intestate, after the first day of *June* one thousand six hundred seventy and one, of the respective person or persons to whom any administration is to be committed take sufficient bonds with two or more able sureties, respect being had to the value of the estate, in the name of the ordinary, with the condition in form and manner following, *mutatis mutandis, viz.*

The Condition of the Bonds.

'II. THE condition of this obligation is such, That if the within-
'bounden *A. B.* administrator of all and singular the goods
'chattels and credits of *C. D.* deceased, do make or cause to be made a
'true and perfect inventory of all and singular the goods chattels and
'credits of the said deceased, which have or shall come to the hands
'possession or knowledge of him the said *A. B.* or into the hands and
'possession of any other person or persons for him, and the same so
'made do exhibit or cause to be exhibited into the registry of
'court, at or before the day of next ensuing; and the
'same goods chattels and credits, and all other the goods chattels and
'credits of the said deceased at the time of his death, which at any time
'after shall come to the hands or possession of the said *A. B.* or into
'the hands and possession of any other person or persons for him do well
'and truly administer according to law; and further do make or cause
'to be made a true and just account of his said administration at or be-
'fore the day of and all the rest and

'residue of the said goods chattels and credits which shall be found remaining upon the said administrator's account, the same being first examined and allowed of by the judge or judges for the time being of the said court, shall deliver and pay unto such person or persons respectively as the said judge or judges by his or their decree or sentence pursuant to the true intent and meaning of this Act shall limit and appoint. And if it shall hereafter appear that any last will and testament was made by the said deceased and the executor or executors therein named do exhibit the same into the said court making request to have it allowed and approved accordingly, if the said *A. B.* withinbounden being thereunto required do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court; then this obligation to be void and of none effect or else to remain in full force and virtue.' (1.)

1 Salk. 315, 316.

III. Which bonds are hereby declared and enacted to be good to all intents and purposes and pleadable in any courts of justice: And also that the said ordinaries and judges respectively shall and may and are enabled to proceed and call such administrators to account for and touching the goods of any person dying intestate; and upon hearing and due consideration thereof to order and make just and equal distribution of what remaineth clear (after all debts funerals and just expences of every sort first allowed and deducted) amongst the wife and children or children's children if any such be or otherwise to the next of kindred to the dead person in equal degree or legally representing their stocks *pro suo cuique jure*, according to the laws in such cases and the rules and limitation hereafter set down; and the same distributions to decree and settle and to compel such administrators to observe and pay the same by the due course of his Majesty's ecclesiastical laws; saving to every one supposing him or themselves aggrieved their right of appeal as was always in such cases used.

Ordinaries have Power to call administrators to Account and to make distribution, &c.

IV. Provided, That this Act or any thing herein contained shall not any ways prejudice or hinder the customs observed within the city of *London* or within the province of *York* or other places having known and received customs peculiar to them, but that the same customs may be observed as formerly; any thing herein contained to the contrary notwithstanding.

Customs of London and York saved. Explained by 1 Jac. 2. c. 17. sec. 8. Skinner 26.

V. Provided always, and be it enacted by the authority aforesaid, That all ordinaries and every other person who by this Act is enabled to make distribution of the surplusage of the estate of any person dying intestate shall distribute the whole surplusage of such estate or estates in manner and form following: that is to say, one-third part of the said surplusage to the wife of the intestate, and all the residue by equal portions to and amongst the children of such persons dying intestate and such persons as legally represent such children in case any of the said children be then dead, (2.) other than such child or children (not being heir at law) who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his life-time by

How and to whom the Surplusage is to be distributed. 2 Mod. 20. 101. 3 Mod. 58. 1 Vern. 465.

Advancement by Portion.

(1.) The Bond is forfeited by not bringing in the account according to the condition, although there be no citation, but not for the non-payment of a debt of the intestate---Archbishop of Canterbury *v.* Wills. 1 Salk. 315. A judgment upon an administration bond obtained at the instance of a creditor to whom it was assigned, was decreed to stand as a security for what was due to the creditor so far as the assets would extend and costs---Greenside *v.* Benson, 3 Atk. 248. as corrected by Sanders, note, ibid. from the register's book, that a creditor may sue on the bond in the name of the ordinary by his authority given, not personally but by the proper Court.---See Archbishop of Canterbury *v.* House, Cowp. 140.

The bond directed by the statute does not extend to the case of an administration during minority, but such bond may be good at common law---Folkes *v.* Dorminique, 2 Str. 1137. So in case of administration *pendente lite*—Wallis *v.* Pipon, Ambl. 183.

(2.) If there be only living children and no issue of children deceased, all the children take equally, if there be no children living, all the issue of deceased children take equally in their own right, and *per Capita*---if there are children living, and the issue of children deceased, they take *per Stirpes*—the issue of the deceased children taking only their parents' shares.—An only child takes two-thirds against the wife.—Skinner 212.

No. XV. 22 & 23 Car. II. c. 10.

portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made: And in case any child other than the heir at law who shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his life-time by portion not equal to the share which will be due to the other children by such distribution as aforesaid; then so much of the surplusage of the estate of such intestate to be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the life-time of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated: but the heir at law notwithstanding any land that he shall have by descent or otherwise from the intestate is to have an equal part in the distribution with the rest of the children without any consideration of the value of the land which he hath by descent or otherwise from the intestate.(3.)

1 Shower 25.

Heir at Law to have an equal Part.

1 Ven. 316.

VI. And in case there be no children nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, the residue of the said estate to be distributed equally to every of the next of kindred (4.) of the intestate who are in equal degree and those who legally represent them. (5.)

(3.) Portions secured for children by settlement on the marriage of the parents are to be brought into hotchpot—Phiney *v.* Phiney, 2 Vern. 638.—Edwards *v.* Freeman, 2 P. Wms. 435. and this although the provision be contingent at the father's death—Edwards *v.* Freeman; but a provision by will of lands or personal estate in case of a partial intestacy shall not—Semble Edwards *v.* Freeman: so Twisden *v.* Twisden, 9 Vesey, 425.—The collation only takes place in case of actual intestacy and not where there is a complete will, and the executor is a trustee for the next of kin—Walton *v.* Walton, 14 Vesey, 324. —Land given to any child other than the heir, is an advancement by the express provision of the statute—*Vi.* Edwards *v.* Freeman.—If, upon the marriage of a son, a settlement is made upon such son for his life and afterwards upon his wife and the issue of the marriage, the whole sum, and not merely the value of the interest, must be brought into hotchpot—Wayland *v.* Wayland, 2 Atk. 635.—"It has been determined that small inconsiderable sums occasionally given to a child cannot be deemed an advancement.—Thus maintenance money, or an allowance to a son at the university or in travelling, is not to be taken as any part of his advancement, this being only for his education.—So putting out a child apprentice is no advancement—Hender *v.* Rose at the Rolls, Trin. 1718.—But the father buying an office for the son, though but at will, or a commission in the army, are advancements—Norton *v.* Norton, 3 Peere Wms. 317, N." This was ruled as to the case of buying a commission—Lord Kirkudbright *v.* Lady Kirkudbright, 8 Vesey, 51. An annuity or other contingent interest is an advancement; let the contingencies be what they may they do not prevent the value. An option was given to the son to account for the value of the annuity or the yearly payments under the peculiar circumstances, S. C.—The use of furniture for life, ruled an advancement—Fitzgib. 285. —An advancement to the heir otherwise than land must be brought into hotchpot—Phiney *v.* Phiney 2 Vern. 638—Lord Kirkudbright *v.* Lady Kirkudbright, *ub. sup.*

In Pratt *v.* Pratt, 2 Str. 35. it was held that lands in Borough English descending upon a younger son must be brought into hotchpot, but the contrary was ruled by Lord Talbot, in Lutwyche *v.* Lutwyche, and the judgment of Pratt *v.* Pratt, was afterwards reversed by him—Temp. Talbot, 276. Money expended in the repairs of houses which descended to the heir is no advancement, otherwise if the houses had been previously given to the heir—Smith *v.* Smith, 5 Ves. 721. The collation is wholly for the benefit of the children and not of the widow—Lord Kirkudbright *v.* Lady Kirkudbright.—The statute does not apply to advancements by a mother---Holt *v.* Frederick, 2 P. Wms. 356.

(4.) The cases of wife and children or representatives of children being provided for as above, the order of distribution is as follows:—1st. The Father.—2d. The mother, (see St. 1. § 2, post.) brothers and sisters, and children of deceased brothers and sisters taking by representation. (The children of deceased brothers and sisters take with the mother, although there be no brothers or sisters living, but the representation is not carried further by stat. 1 James II. any more than by 13 & 14 Charles II.—Stanley *v.* Stanley, 1 Atk. 455.)—3d. Grandfather and grandmother—(these are nearer in degree than the children of deceased brothers and sisters, taking in their own right, there being no brother or sister living, and not by representation, and would therefore seem entitled to take in exclusion of the nephews and nieces, although they would be themselves excluded where the nephews and nieces take with brothers and sisters by representation- -but I do not find the case noticed, and there would be an apparent incongruity, in the children of deceased children taking equally with the mother, as in Stanley & Stanley, and being excluded by a more remote relation.—The case of there being both grandfather and grandmother in one line, and only one of those relatives in the other, does not ap-

No. XV. 22 & 23 Car. II. c. 10.

VII. Provided, That there be no representations admitted among collaterals after brothers and sisters children: (6.) And in case there be no wife then all the said estate to be distributed equally to and amongst the children: And in case there be no child then to the next of kindred in equal degree of or unto the intestate and their legal representatives as aforesaid, and in no other manner whatsoever.

If no Wife amongst the Children. 1 Salk. 250. Raymond 496. Carthew 51. Jones, Sir Tho. 93. 2 Ver. 169, 170. 233.

No Distribution till after One Year.

VIII. Provided also, and be it likewise enacted by the authority aforesaid, To the end that a due regard be had to creditors that no such distribution of the goods of any person dying intestate be made till after one year be fully expired after the intestate's death, (7.) and that such and every one to whom any distribution and share shall be allotted, shall give bond with sufficient sureties in the said courts that if any debt or debts truly owing by the intestate shall be afterwards sued for and recovered or otherwise duly made to appear; that then and in every such case he or she shall respectively refund and pay back to the administrator his or her rateable part of that debt or debts and of the costs of suit and charges of the administrator by reason of such debt out of the part and share so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made as aforesaid.

If Debts afterwards appear, then all to refund proportionably.

Act not to extend to Administration cum Testamento annexo.

IX. Provided always, and be it enacted by the authority aforesaid, That in all cases where the ordinary hath used heretofore to grant administration *cum Testamento annexo*, he shall continue so to do, and the will of the deceased in such testament expressed shall be performed and observed in such manner as it should have been if this Act had never been made.

X. Provided also, That this Act shall continue in force for seven years, and from thence to the end of the next Session of Parliament and no longer. [29 Car. 2. c. 3. § 25. 30 Car. 2. stat. 1. c. 6. made perpetual by 1 Jac. 2. c. 17. § 5.]

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pear to have been noticed,—but the grandmother whose husband is living is equally related to the deceased with her husband or the surviving grandfather or grandmother in the other line.)—4th. Great grandfather, uncle, nephew.—5th. Great grandfather's father, great uncle, great nephew, cousin German.—6th. Great great uncle, great uncle's son, son of cousin German

The half blood take equally with the whole blood in the same degree.

A child *en ventre sa mere* is considered as *in Esse*---Burn's Eccles. L. Tit. *Wills Distribution.*

(5.) By the Statute of Frauds, 29 C. 2. c. 3. s. 25. C. ante Part II. Class 1. Nothing in this statute shall extend to the estates of feme coverts that shall die intestate, but their husbands may have administration of their personal estates and recover and enjoy the same as if this Act had not passed, and the husband's right of administration and distribution are transmissible to his representatives, and do not go to the next of kin of the wife—Elliott *v.* Taylor, 1 Wils, 168.—Humphrey *v.* Bullen, 1 Atk. 458. The husband does not take under a disposition to the next of kin of the wife—Watt *v.* Watt, 3 Vesey, 214, and see Anderson *v.* Dawson, 15 Vesey, 537. Bailey *v.* Wright, 18 Ves. 49. 1 Swanst. 39. Brothers and sisters or their representatives take an equal share with the mother.—See 1 James 2. c. 17. post.

(6.) It is fully settled that the representation by this clause is confined to children of the brothers and sisters of the deceased.—Also that it does not extend to the grandchildren of brothers and sisters.

(7.) But the next of kin have a vested interest immediately on the decease of the intestate.—Earl of Winchelsea *v.* Norcliffe, 1 Vern. 403.

[No. XVI.] 29 Charles II. c. 3.—An Act for the Prevention of Frauds and Perjuries.

[Inserted Part II. Class I. No. XVII. See No. 5, to the last Number.]

[No. XVII.] 30 Charles II. st. 1. c. 7.—An Act to enable Creditors to recover their Debts of the Executors and Administrators of Executors in their own Wrong.

30 Charles II. c. 7.

'WHEREAS the executors and administrators of such persons who have possessed themselves of considerable personal estates of other

No. XVII. 30 Car. II. st. 1. c. 7.

'dead persons and converted the same to their own use, have no remedy 'by the rules of the common law as it now stands to pay the debts of 'those persons whose estate hath been so converted by their testator or 'intestate, which hath been found very mischievous, and many creditors 'defeated of their just debts, although their debtors left behind them 'sufficient to satisfy the same with a great overplus:'

3 Mod. 113.

II. For remedy whereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority thereof, That all and every the executors and administrators of any person or persons who as executor or executors in his or their own wrong or administrators shall from and after the first day of *August* next ensuing waste or convert any goods chattels estate or assets of any person deceased to their own use shall be liable and chargeable in the same manner as their testator or intestate would have been if they had been living. This Act to continue in force for three years and from thence to the end of the next Session of Parliament and no longer. [Made perpetual and enlarged by 4 & 5 W. and M. c. 24. § 12]

1 Jac. 2. c. 17.

[No. XVIII.] 1 James II. c. 17.—An Act for reviving and Continuance of several Acts of Parliament therein-mentioned.

1 Jac. II. c. 17. 17 Car. 2. c. 8. and 22 & 23 Car. 2. c. 10. made perpetual

V. AND be it enacted by the authority aforesaid, That one other Act made in the seventeenth year of his said late Majesty's reign, intituled *An Act for avoiding unnecessary Suits and Delays*: And also one other Act made in the two-and-twentieth and three-and-twentieth years of his late Majesty's reign, intituled *An Act for the better settling Intestate Estates*, (which said latter Act is explained by a clause in one other Act made in the nine-and-twentieth year of his said Majesty's late reign, intituled *An Act for Prevention of Frauds and Perjuries*,) both which said Acts with the said clause are continued by one other Act made in the thirtieth year of his said late Majesty's reign, intituled *An Act for reviving both the said former Acts*. All which said Acts and clauses shall be in force and is hereby made perpetual.

Explanatory Clause in 29 Car. 2. c. 3. sec. 25. of 22 & 23 Car. 2. c. 10.

Administrator compellable to account only to Persons interested.

VI. Provided always, and it is hereby further enacted, That no administrator shall from the four-and-twentieth day of *July* next be cited to any the courts in the said last Act mentioned to render an account of the personal estate of his intestate (otherwise than by an inventory or inventories thereof) unless it be at the instance or prosecution of some person or persons in behalf of a minor, or having a demand out of such personal estate, as a creditor or next of kin, nor to be compellable to account before any the ordinaries or judges by the said last Act empowered and appointed to take the same otherwise than as is aforesaid; any thing in the said last Act contained to the contrary notwithstanding.

Brother and Sister shall share equally with the Mother.

VII. Provided also, and it is further enacted by the authority aforesaid, That if after the death of a father any of his children shall die intestate without wife or * children in the lifetime of the mother, every brother and sister and the representatives of them shall have an equal share with her; any thing in the last mentioned Acts to the contrary notwithstanding.

Customs of London and Province of York, &c.

VIII. Provided, and it is hereby for the determining some doubts arising upon the Acts aforementioned for the better settling intestates estates enacted and declared, That the clause therein by which it is provided that that Act or any thing therein contained should not any ways prejudice or hinder the customs observed within the city of *London* and province of *York* was never intended, nor shall be taken or construed to extend to such part of any intestate's estate as any administrator by virtue only of being administrator, by pretence or reason of any custom

* *Or* is to be construed as *and*, and the mother, though there be a wife, takes an equal share. Keyleway *v.* Keyleway. 2 P. Wms. 344. Stanley *v.* Stanley, 1 Alk. 457.

may claim to have to exempt the same from distribution, but that such part in the hands of such Administrator shall be subject to distribution as in other cases within the said Act. No. XVIII. 1 James II. c. 17.

[No. XIX.] 4 William & Mary, c. 2.—An Act that the Inhabitants of the Province of *York* may dispose of their Personal Estates by their Wills, notwithstanding the Custom of that Province.

'WHEREAS by custom within the province of *York* or other usage the widows and younger children of persons dying inhabitants of that province are entitled to a part of the goods and chattels of their late husbands and fathers (called her and their reasonable part) notwithstanding any disposition of the same by their husbands and fathers last wills and testaments, and notwithstanding any jointures made for the livelihood of the said widows by their husbands in their lifetime which are competent and according to agreement, whereby many persons are disabled from making sufficient provision for their younger children:' For remedy whereof; 4 W. & M. c. 2.

II. Be it enacted by the King's and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That from and after the six-and-twentieth day of *March* one thousand six hundred ninety and three, it shall and may be lawful for any person or persons inhabiting or residing or who shall have any goods or chattels within the province of *York* by their last wills and testaments to give bequeath and dispose of all and singular their goods chattels debts and other personal estate to their executor or executors or to such other person or persons as the said testator or testators shall think fit, in as large and ample manner as by the laws and statutes of this realm any person or persons may give and dispose of the same within the province of *Canterbury* or elsewhere: And that from and after the said six-and-twentieth day of *March* one thousand six hundred ninety and three, the widows children and other the kindred of such testator or testators shall be barred to claim or demand any part of the goods chattels or other personal estate of such testator or testators in any other manner than as by the said last wills and testaments is limited and appointed; any law statute or usage to the contrary in any wise notwithstanding. Persons within the Province of York may dispose by Will of all their Personal Estate.

III. Provided always, That nothing in this Act contained shall extend or be construed to extend to the citizens of the cities of *York* and *Chester** who are or shall be freemen of the said respective cities inhabiting therein or within the suburbs thereof at the time of their death, but that every such citizen's widow and children shall and may have and enjoy such reasonable part and proportion of the testators personal estate as she or they might or ought to have had by the custom of the province of *York* before the making of this Act.

* The exception as to York is repealed by statute 2 & 3 Anne, c. 5.—With respect to Chester, there has not been any repeal, but the exception itself is nugatory; as the archdeaconry of Chester, within which the city of Chester is situate, is part of the ancient diocese of Lichfield and Coventry, to which the custom of the province of York never applied; and was incorporated with the archdeaconry of Richmond, in the diocese of York, to form the new-erected diocese of Chester, by statute 33 Hen. VIII. c. 31.

[No. XX.] 4 & 5 William & Mary, c. 24.—An Act for reviving, continuing, and explaining several Laws therein mentioned, which are expired and near expiring. 4.

XII. AND be it further enacted by the authority aforesaid, That an Act made in the thirtieth year of the reign of King *Charles* the 4 & 5 W. & M. c. 24.

No. XX. 4 & 5 W. & M. c. 24.

Second, intituled *An Act to enable Creditors to recover their Debts of the Executors and Administrators of Executors in their own Wrong*; which said Act in the first year of the reign of the late King *James* the Second, was enacted to be in force from the first day of the then present Session of Parliament and to continue for seven years, and from thence to the end of the first Session of the then next Parliament shall be and is hereby continued and made perpetual. And forasmuch as it hath been a doubt whether the said Act did extend to any executor or executors administrator or administrators of any executor or administrator of right, who for want of privity in law were not before answerable nor could be sued for the debts due from or by the first testator or intestate, notwithstanding that such executors or administrators had wasted the goods and estate of the first testator or intestate or converted the same to his or their own use: For remedy whereof be it further enacted and declared by the authority aforesaid, That all and every the executor and executors administrator or administors of such executor or administrator of right who shall waste or convert to his own use goods chattels or estate of his testator or intestate, shall from henceforth be liable and chargeable in the same manner as his or their testator or intestate should or might have been, any law or usage to the contrary notwithstanding.

30 Car. 2. st. 1. c. 7. continued by 1 Jac. 2. c. 17. sec. 14. hereby made perpetual Devastavit against Executors by Right.

Further parts in Vol. 3. p. 317. and Vol. 6. p. 861.

[No. XXI.] 7 & 8 William III. c. 38.—An Act to take away the Custom of *Wales*, which hinders Persons from disposing their Personal Estates by their Wills.

7 & 8 W. III. c. 38.

'WHEREAS in several counties and places within the principality of *Wales* and marches thereof the widows and younger children of persons dying inhabitants therein have often claimed and pretended to be entitled to a part of the goods and chattels of their late husbands or fathers called her and their reasonable part by virtue or colour of a custom or other usage within the said principality and marches thereof notwithstanding any disposition of the same by their husbands and fathers last wills and testaments or by deed in their lives time, and notwithstanding a competent jointure according to the agreement made for the livelihood of the said widows by their husbands which have often occasioned great troubles disputes and expences about and concerning such custom and usage whereby many persons have been and are disabled from making sufficient provision for their families younger children and relations and great disputes troubles and expences have often happened concerning the same to the great damage or ruin of many:' For remedy whereof and for preventing all questions doubts and difficulties for the future touching the said custom and usage, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of *June* one thousand six hundred ninety-six, it shall and may be lawful for any person or persons inhabiting or residing or who shall have any goods or chattels within the principality of *Wales* or marches thereof by their last wills and testaments to give bequeath and dispose of all and singular their goods chattels debts and other personal estate to their executor or executors or to such other person or persons as the said testator or testators shall think fit in as large and ample manner as by the laws and statutes of this realm any person or persons may give and dispose of the same within any part of the province of *Canterbury* or elsewhere; and that from and after the said twenty-fourth day of *June* one thousand six hundred ninety-six, the widows children and other the kindred of such testator or testators shall be barred to claim or demand any part of the goods chattels or other personal estate of such testator or testators in any other manner than as by the said last wills and testaments is limited and appointed; any law statute custom or usage to the contrary in anywise notwithstanding.

Inhabitants of Wales may for the future, dispose of their Goods and Chattels by Will, &c.

II. * Provided always, That nothing in this Act contained shall extend to take away any right or title which any woman now married or younger children now born may have to the reasonable part of their husbands or fathers estate by virtue or colour of the said custom or usage.

* Not to take away the Right of Women already married, &c.

[No. XXII.] 2 & 3 Anne, c. 5.—An Act to repeal a Proviso in an Act of the Fourth Year of the Reign of King *William* and Queen *Mary*, which prevents the Citizens of the City of *York* from disposing of their personal Estates by their Wills, as others inhabiting within the Province of *York* by that Act may do.

2 & 3 Anne, c. 5.

4 W. & M. c. 2.

'WHEREAS by an Act made and passed in the fourth year of the reign of their late Majestics King *William* and Queen *Mary*, intituled *An Act that the Inhabitants of the Province of* York *may dispose of their personal Estates by their Wills, notwithstanding the Custom of that Province:* In which Act there is a proviso, That nothing in the said Act contained should extend or be construed to extend to the citizens of the cities of *York* and *Chester* who were or should be freemen of the said respective cities inhabiting therein or within the suburbs thereof at the time of their death: But that every such citizen's widow and children should and might have and enjoy such reasonable part and proportion of the testator's personal estate as she or they might or ought to have had by the custom of the province of *York* before the making of the said Act: And whereas, notwithstanding the mayor and commonalty on behalf of the inhabitants of the said city of *York* have humbly desired that the said proviso may be repealed so that the freemen of the said city may have the benefit of the said Act of Parliament as well as all other persons inhabiting within the said province;' Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled, and by the authority of the same, That from and after the six-and-twentieth day of *March* in the year of our Lord one thousand seven hundred and four, the said proviso so far as the same concerns the citizens of the city of *York* shall be repealed and is hereby repealed and made null and void, so that from thenceforth it shall and may be lawful for all and every the citizens of the said city of *York* who are or shall be freemen of the said city inhabiting therein or within the suburbs thereof at the time of their death by their last wills and testaments to give bequeath and dispose of their goods chattels debts and other personal estates to their executor or executors or to such other person or persons as the said testator or testators shall think fit as any other person or persons inhabiting or residing within the said province of *York* may lawfully do by virtue of the said Act: And that from and after the said six-and-twentieth day of *March* the widows children and other kindred of such testator or testators shall be barred to claim or demand any part of the goods chattels or other personal estate of the testator or testators in any other manner than as by the said last wills and testaments is limited and appointed; any thing in the said Act or any other law statute or usage to the contrary in anywise notwithstanding.

Freemen of York may dispose of their personal Estates by Will.

Widows or Children barred from Claim, otherwise than by Testators Will.

II. Provided and be it enacted, That this Act shall be taken and allowed in all courts within this kingdom as a publick Act; and all judges and justices are required as such to take notice thereof without special pleading the same.

Public Act.

[No. XXIII.] 4 & 5 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.

[Inserted Part I. Class I. No. 23. See Sections 14, 27.]

No XXIV. 11 Geo. I. c. 18.

[No. XXIV.] 11 George I. c. 18.—An Act for regulating Elections within the City of *London*, and for preserving the Peace, good Order and Government of the said City.

11 Geo. I. c. 18.

XVII. AND to the intent that persons of wealth and ability who exercise the business of merchandize and other laudable employments within the said city may not be discouraged from becoming free of the same by reason of the custom restraining the citizens and freemen thereof from disposing of their personal estates by their last wills and testaments; Be it further enacted by the authority aforesaid, That it shall and may be lawful to and for all and every person and persons who shall at any time from and after the said first day of *June* one thousand seven hundred and twenty-five, be made or become free of the said city, and also to and for all and every person and persons who are already free of the said city and on the said first day of *June* one thousand seven hundred and twenty-five, shall be unmarried and not have issue by any former marriage to give devise will and dispose of his and their personal estate and estates to such person and persons and to such use and uses as he or they shall think fit; any custom or usage of or in the said city or any by-law or ordinance made or observed within the same to the contrary thereof in anywise notwithstanding.

What Freemen made after 1st June 1725, may dispose of their Personal Estate as they think fit.

Exception.

XVIII. Provided nevertheless, That in case any person who shall at any time or times from and after the said first day of *June* one thousand seven hundred and twenty-five, become free of the said city, and any person or persons who are already free of the said city, and on the said first day of *June* one thousand seven hundred and twenty-five, shall be unmarried and not have issue by any former marriage hath agreed or shall agree by any writing under his hand upon or in consideration of his marriage or otherwise that his personal estate shall be subject to or be distributed or distributable according to the custom of the city of *London;* and in case any person so free or becoming free as aforesaid shall die intestate: in every such case the personal estate of such person so making such agreement or so dying intestate shall be subject to and be distributed and distributable according to the custom of the said city; any thing herein contained to the contrary in anywise notwithstanding.

[No. XXV.] 25 George II. c. 6.—An Act for avoiding and putting an End to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning real Estates in that Part of *Great Britain* called *England*, and in his Majesty's Colonies and Plantations in *America*.

[Inserted Part II. Class XI. No. VIII.]

[No. XXVI.] 38 George III. c. 87.—An Act for the Administration of Assets in Cases where the Executor to whom Probate has been granted is out of the Realm: —[28*th June* 1798.]

38 Geo. III. c. 87.

'WHEREAS the laws now existing are not sufficient to enforce a speedy distribution of the assets of deceased persons where the executor to whom probate of the will hath been granted is out of the jurisdiction of his Majesty's courts of law and equity;' Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That at the expiration

of twelve calendar months from the death of any testator if the executors or executor to whom probate of the will shall have been granted are or is then residing out of the jurisdiction of his Majesty's courts of law and equity, it shall be lawful for the Ecclesiastical Court which hath granted probate of such will upon the application of any creditor next of kin or legatee grounded on the affidavit hereinafter mentioned to grant such special administration as hereinafter is also mentioned; which administration shall be written or printed upon paper or parchment stamped only with one five-shilling stamp and shall pay no further or other duty to his Majesty his heirs or successors.

If, at the Expiration of twelve Months from a Testator's Decease the Executor to whom Probate is granted, shall not reside within the Jurisdiction of his Majesty's Courts, a Creditor, &c. may obtain Special Administration on a 5*s.* Stamp.

II. And be it further enacted, That the party applying to the Spiritual Court to grant such administration as aforesaid shall make an Affidavit in the following words or to the purport and effect following:

The Party applying to make the following Affidavit.

'I *A. B.* of do swear, That there is due and owing to me upon bond or simple contract or upon account unsettled as the case may happen to be (in which latter case he shall swear to the best of his belief only) from the estate and effects of deceased, the sum of and that *C. D.* the only executor capable of acting, and to whom probate hath been granted, hath departed this kingdom and is now out of the jurisdiction of his Majesty's courts of law and equity, and that this deponent is desirous of exhibiting a bill in equity in his Majesty's court of for the purpose of being paid his demand out of the assets of the said testator.'

III. And be it further enacted, That the administration to be granted pursuant to this Act shall be in the form hereinafter mentioned; (that is to say,)

Administration to be granted in the following Form.

'by divine providence, Archbishop of *Canterbury*, Primate of all *England* and Metropolitan, to our well-beloved in *Christ* greeting: Whereas it hath been alleged before the worshipful doctor of laws surrogate of doctor of laws master keeper or commissary of our prerogative court of *Canterbury* lawfully constituted by you the said That did, whilst living and of sound mind memory and understanding, make and duly execute his last will and testament in writing, and did therefore nominate constitute and appoint his executors, (*or* sole executor) who in the month of proved the said will by the authority of our said court, and now reside (*or* resides) out of this kingdom and out of the jurisdiction of his Majesty's courts of law and equity (as in and by an affidavit duly made and sworn to by and brought into and left in the registry of our said court, reference being thereunto had will more fully and at large appear): And whereas the surrogate aforesaid having duly considered the premises did at the petition of the said decree letters of administration of all and singular the goods chattels and credits of the said deceased, to be committed and granted to you the said named by or on the behalf of the said a creditor (legatee) or (one of the next kin) of the said deceased (*as the case may be*) limited for the purpose, to become and be made a party to a bill or bills to be exhibited against you in any of his Majesty's courts of equity and to carry the decree or decrees of any of the said court or courts into effect, but no further or otherwise (justice so requiring): And we being desirous that the said goods chattels and credits may be well and faithfully administered applied and disposed of according to law, do therefore by these presents grant full power and authority to you in whose fidelity we confide to administer and faithfully dispose of the said goods chattels and credits according to the tenor and effect of the said will, limited as aforesaid, so far as such goods chattels and credits of the deceased will thereto extend, and the law requires you having been already sworn well and faithfully to admi-

No. XXVI. 38 Geo. III. c. 87.

'nister the same, and to make a true and perfect inventory of all and sin-
'gular the said goods chattels and credits so far as the same may come
'to your hands, and to exhibit the same into the registry of our said
'prerogative court of *Canterbury* on or before the next
'ensuing, and also to render a just and true account thereof: And we do
'by these presents ordain and constitute you administrator of all and
'singular the goods chattels and credits of the said deceased limited as
'aforesaid, but no further or otherwise.

'Given at *London*, the day of in the year of our
'Lord and in the year of our
'Translation.'*

Court of Equity may appoint Persons to collect outstanding Debts.

IV. And be it further enacted, That it shall be lawful for the court of equity in which such suit shall be depending to appoint (if it shall be needful) any persons or person to collect in any outstanding debts or effects due to such estate and to give discharges for the same, such persons or person giving security in the usual manner duly to account for the same.

Stock belonging to the Estate of the Deceased, may be transferred into the Name of the Accountant General in Chancery, in Trust for such Purposes as the Court shall direct in any Suit. Executor returning to reside within Jurisdiction of the Court to be made a Party in such Suit.

V. And be it further enacted, That it shall be lawful for the accountant general of the High Court of Chancery or for the secretary or deputy secretary of the governor and company of the bank of *England* to transfer, and for the governor and company of the bank of *England* to suffer a transfer to be made of any stock belonging to the estate of such deceased person into the name of the accountant general in trust for such purposes as the court shall direct in any suit in which the person to whom such administration hath been granted shall be or may have been a party: Provided nevertheless, that if the executors or executor capable of acting as such shall return to and reside within the jurisdiction of any of the said courts pending such suit, such executors or executor shall be made party to such suit and the costs incurred by granting such administration and by proceeding in such suit against such administrator, shall be paid by such person or persons or out of such fund as the court where such suit is depending shall direct.

Where an Infant is sole Executor, Administration, with the Will annexed, to be granted to the Guardian &c. till the Infant is twenty-one.

VI. 'And whereas inconveniences arise from granting probate to in-
'fants under the age of twenty-one;' be it enacted, That where an infant is sole executor, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the spiritual court shall think fit, until such infant shall have attained the full age of twenty-one years, at which period and not before probate of the will shall be granted to him.

Who shall have the same Power as an Administrator durante minore ætate.

VII. And be it enacted, That the person to whom such administration shall be granted, shall have the same powers vested in him as an administrator now hath by virtue of an administration granted to him *durante minore ætate* of the next of kin.

* Upon the death of the executor the authority of an administrator under this Act is not void, but only voidable—Taynton *v.* Hannay, 3 B. & P. 26.

[No. XXVII.] 58 George III. c. 81.—An Act for extending to that part of the United Kingdom called *Ireland* certain provisions of the Parliament of *Great Britain*, in relation to Executors under the age of Twenty-one Years, and to Matrimonial Contracts.—[*5th June* 1818.]

PART III.

CLASS XIV.

Sales.

[No. I.] 58 Geo. III. c. 82.—An Act to prevent Frauds in the Sale of Grain in *Ireland.*—[*5th June* 1818.]

PART III.

CLASS XV.

Saving Banks.

[No. I.] 57 Geo. III. c. 130.—An Act to encourage the establishment of Banks for Savings in *England.*—[12*th July* 1817.]

[No. II.] 58 Geo. III. c. 48.—An Act to amend an Act passed in the last Session of Parliament to encourage the establishment of Banks for Savings in *England.*—[30*th May* 1818.]

[No. III.] 59 Geo. III. c. 62.—An Act for the Protection of Banks for Savings in *Scotland.*—[2*d July* 1819.]

ADDENDA

TO

PART III. CLASS II.

Trade, Navigation, Ship-Owners, Mariners, and Fisheries.

[No. I.] 3 George IV. c. 41.—An Act to repeal divers ancient Statutes and Parts of Statutes, so far as they relate to the Importation and Exportation of Goods and Merchandize from and to Foreign Countries.—[24*th June*, 1822.]

3 Geo IV. c. 41.

Statutes relating to Importation of Goods, &c. previous to 12 C. 2. remaining unrepealed.

WHEREAS several Statutes and Acts of Parliament or certain parts thereof respectively relating to the importation and exportation of goods and merchandize from foreign countries, and to the regulations and restrictions concerning such importation and exportation, made and passed at various times before the twelfth year of the reign of King *Charles* the Second, remain unrepealed, although the same are inconsistent with or rendered unnecessary by the Acts made since that time and now in force for the encouraging and increasing of shipping and navigation; and doubts may be entertained how far the said statutes or Acts or some parts thereof may or may not be or remain in force or effect; and for the preventing of any inconvenience which may arise from such doubts, it is expedient that the said statutes and Acts or so much thereof as relate to the importation and exportation of such goods and to the regulations and restrictions concerning the same should be expressly repealed and declared to be no longer in force or effect; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act so much and such parts of the several statutes hereinafter mentioned and recited relating to the importation of goods or to commerce or navigation as are hereinafter specified and set forth shall be Repealed, that is to say;—So much of a statute of uncertain date concerning money, whereby it is forbidden on the King's behalf, that none bring money into the country but only for his expences;—and also, So much of the said statute as relates to any money so brought;—and also, So much of a statute made in the ninth year of the reign of King *Edward* the Third, whereby it is ordained and established, "That all merchants strangers and denizens and all other and every of them of what estate or condition soever they be, that shall buy or sell corn wines avoirdupois flesh fish and all other livings and victuals wools cloths wares merchandizes, and all other things vendible from whencesoever they come by foreigners or denizens at what place soever it be, city borough town port of the sea fair market or elsewhere within the realm, within franchise or without, may freely without in-

Parts of certain Statutes relating to Importation, &c. shall be repealed; viz.

Stat. de Monetâ Temp. Incerti. (vulgo 20 E. 1.)

9 E. 3. st. 1. c. 1. General Freedom of Trade to Aliens and Denizens.

No. I.
3 Geo. IV.
c. 41.

terruption sell them to what persons it shall please them as well to foreigners as to denizens, except always the enemies of our Lord the King and his realm;"—and also, So much of the said statute whereby any damages are given or any penalty or punishment or loss of franchise is imposed or inflicted, for any disturbance to any merchants contrary to the said statute;—and also, So much of the said statute whereby it is ordained and established, "That no alien or denizen shall be troubled, but that he may freely buy such things aforesaid in the said places, and carry them where it pleaseth him;"—and also, So much of a statute made in the eleventh year of the reign of the said King *Edward* the Third, whereby it is accorded, "That no man or woman of *England Ireland Wales* or *Scotland* (the King Queen and their children only excepted,) shall wear no cloth other than is made in *England Ireland Wales* or *Scotland*, upon pain of forfeiture of the same cloth, and further to be punished at the King's will;"—and also, So much of the said statute whereby it is accorded and established, "That no merchant foreign nor denizen nor none other shall bring or cause to be brought privily or openly by himself nor by other into the lands of *England Ireland Wales* and *Scotland*, within the King's power, any cloths made in any other places than in the same upon the forfeiture of the said cloths, and further to be punished at the King's will;"—and also, So much of a statute made in the fourteenth year of the reign of the said King *Edward* the Third, whereby it is granted or provided, "That all merchants denizens and foreigners, except those which be of the King's enmity, may without let safely come into the realm of *England* with their goods and merchandize;"—and also, So much of a statute made in the eighteenth year of the reign of the said King *Edward* the Third, whereby it is granted or provided, "That the sea be open to all manner of merchants to pass with their merchandize where it shall please them;"—and also, So much of a statute made in the twenty-fifth year of the reign of the said King *Edward* the Third, whereby it is accorded, "That the said hereinbefore recited statute made in the ninth year of the said King *Edward* the Third, in all points and articles contained in the same be holden kept and maintained; and that if any statute charter letters patents proclamation or commandment usage allowance or judgment be made to the contrary, the same shall be openly repealed void and holden for none; and moreover that every merchant or other of what condition he be, as well alien as denizen, that bring wines flesh fish or other victuals cloths woolfells avoirdupois or any other manner of merchandizes or chaffer to the city of *London* or other cities boroughs or good towns of *England* or ports of the sea, may freely and without challenge or impeachment of any sell them in gross or at retail or by parcels at his will, to all manner of people that will buy the same notwithstanding any franchises grants or custom used or any other thing done to the contrary;"—and also, So much of a statute made in the twenty-seventh year of the reign of the said King *Edward* the Third, whereby it is ordained and established, "That all merchants *Gascoins* and other strangers may safely bring their wines into *England*, to what port that shall please them, and thereof make their profits;"—and also, So much of the said last-mentioned statute as relates to the buying or engrossing or forestalling of wines in *Gascoigne*, and as imposes any penalty or forfeiture in respect of such buying engrossing or forestalling;—and also, So much of the said last-mentioned statute as relates to the gauging of wines by the King's gauger or his deputy;—and also, So much of the statute or ordinance of the staples made in the twenty-seventh year of the reign of the said King *Edward* the Third, whereby it is ordained established or provided, "That all merchants strangers which be not of the King's enmity of what land or nation that they be, may safely and surely come and dwell in the realm of *England* and land of *Wales* where they will, and from thence return with their ships wares and all manner of merchandizes, and freely sell their merchandizes at the staple and elsewhere within the same realm and lands to any that will buy them;"—and also, So much of a statute

11 E. 3. c. 2. 3. Importation of Foreign made Cloths prohibited.

14 E. 3. st. 2. c. 2. General Freedom of Trade.

18 E. 3. st. 2. c. 3. The Sea open to all Merchants.

25 E. 3. st. 3. (vulgo st. 4.) c. 2. confirming and enlarging st. 9 E. 3. st. 1. c. 1.

27 E. 3. st. 1. c. 6. Importation of Wines from Gascony by Aliens.

27 E. 3. st. 1. cc. 5. 7. Forestalling Wines in Gascony.

27 E. 3. st. 1. c. 8. Gauging Wines. (Statute of the Staples.)

27 E. 3. st. 2. c. 2. Freedom of Trade to all Merchants not Enemies.

made in the twenty-eighth year of the reign of the said King *Edward* the Third, whereby it is accorded and established, "That no manner of ship which is fraught towards *England* or elsewhere be compelled to come to any port of *England*, nor there to abide against the will of the masters and mariners of the same or of the merchants whose the goods be; and if such ships come of their own good will or be driven by tempests or other misfortune or mischief to any port in *England*, and the masters mariners or merchants of the same ships will sell or deliver part of their merchandizes with their good will, it shall be lawful for every man to buy such merchandize freely without impeachment in the port where such ships shall come, albeit the said merchandizes be not put to land to sell; so that the masters mariners and merchants after that they have sold that which pleaseth them of their said goods and paid thereof the customs, may freely depart and go with their ships and all the remnant of their goods whither it shall please them, without custom thereof to be paid;"—and also, So much of the said last-mentioned statute as imposes any forfeiture upon disturbing or hindering such merchants;—and also, So much of a statute made in the thirty-first year of the reign of the said King *Edward* the Third, in the Parliament holden at *Westminster* on the *Monday* next after *Easter* week, as relates to the contents of tuns of wine and the gauging thereof;—and also, So much of a statute made in the thirty-seventh year of the reign of the said King *Edward* the Third, whereby the statutes of wines of the twenty-seventh year of the said King is confirmed or altered or amended;—and also, So much of a statute made in the thirty-eighth year of the reign of the said King *Edward* the Third, whereby it was ordained that all merchants as well aliens as denizens, may sell and buy all manner of merchandizes and freely carry them out of the realm;—and also, So much of the said last-mentioned statute, whereby it is accorded and assented, "That no owner shall lose his ship for a small thing put within the ship not customed without his knowledge or privity;"—and also, So much of the said last-mentioned statute, whereby it is assented, "That the statutes and ordinances made as to the merchandize of wines and of those that pass the sea to fetch wines in *Gascoigne* shall stand in force;"—and also, So much of the said last-mentioned statute, whereby it is granted or provided, "That the *Gascoignes* and all other aliens may come into the realm with their wines, and freely sell them without any disturbance or impeachment;" and whereby it is saved to the King, "That it may be lawful for him whensoever it shall seem meet to him and his good council, to ordain on this article in the manner as best shall seem to him for the profit of him and his Commons;"—and also, So much of a statute made in the forty-second year of the reign of the said King *Edward* the Third, whereby it is assented and accorded, "That no *Englishman* shall pass into *Gascoigne* to seek wines there, but they shall be brought into *England* by the *Gascoignes* and other aliens; and that all the ships of *England* and of *Gascoigne* that cometh into *Gascoigne*, shall be first freighted to bring wines into *England* before all other;"—and also, So much of a statute made in the forty-third year of the reign of the said King *Edward* the Third, whereby it is ordained, "That all merchants aliens and denizens may freely go through *England Ireland* and *Wales*, and buy and sell wools woolfells and leather and all other merchandizes at their will without impeachment or disturbance;"—and also, So much of the said statute made in the forty-third year of the reign of the said King *Edward* the Third, as relates to *Englishmen Irishmen* or *Welshmen* passing into *Gascoigne* to fetch wines there;—and also, So much of a statute made at *Gloucester* in the second year of the reign of King *Richard* the Second, whereby it is ordained and established, "That all merchants aliens of what realms countries or seignories that they come, which be of the amity of the King and of his realm, may safely and surely come within the realm of *England* and in all cities boroughs ports of the sea fairs markets or other places within the realm within franchise and without may abide with their goods and all merchandizes under the safeguard and protection of the King as long as shall please them without

28 E. 3. c. 13. (ad finem.) Merchants coming freely to any Ports.

31 E. 3. st. 1. c. 5. Guaging Wine.

37 E. 3. c. 16. confirming 27 E. 3. st. 1. cc. 5. 6. 7.

38 E. 3. st. 1. c. 2. Freedom of Trade.

38 E. 3. st. 1. c. 8. Loss of Ship for uncustomed Goods.

38 E. 3. st. 1. c. 10. confirming 27 E. 3. st. 1. cc. 5. 6. 7.

38 E. 3. st. 1. c. 11. Importation of Wines by Aliens.

42 E. 3. c. 8. Importation of Wines from Gascony by Aliens, in English or Gascoigne Ships.

43 E. 3. c. 1. Purchase of Wools by Aliens or Denizens.

43 E. 3. c. 2. Englishmen buying Wines in Gascony.

2 R. 2. st. 1. c. 1. Freedom of Trade to all Merchants in Amity.

No. I.
3 Geo. IV.
c. 41.

disturbance or denying of any person; and that as well those merchants aliens as denizens whatsoever and every of them, that will buy and sell corn flesh fish and all manner other victuals and sustenance, and also all manner of spiceries fruit tea and all manner of small wares as silk gold wire or silver wire coverchiefs and other such small ware may freely and without denying or any manner of disturbance as well in the city of *London* as in all cities boroughs ports of the sea fairs markets and other places within the realm sell and buy in gross or by parcels to whom and of whom they please, denizens or foreign, except the King's enemies; and except also that all manner of wines shall be sold by the said strangers in gross as in the said statute is mentioned; and as to all other great wares as cloth of gold and silver silk sendal napery linen cloth canvas and other such great wares, and also all manner of other great merchandizes not above expressed whatsoever they be as well aliens as denizens as well in the city of *London* as in other cities boroughs ports of the sea towns fairs markets and elsewhere through the said realm within franchise and without may sell the same in gross only to every person foreign or denizen that will buy the same freely and without denying (except as in the said statute is excepted); notwithstanding any statutes ordinances charters judgments allowances customs and usages made or suffered to the contrary; which charters and franchises if any there be shall be utterly repealed as a thing made used or granted against the common profit in oppression of the people;"—and also, So much of the said last-mentioned statute whereby any damages are given or any penalty or punishment or loss of franchise is imposed or inflicted for any disturbance to any merchant contrary to the said provisions of the said statute;—and also, So much of the said last-mentioned statute

2 R. 2. st. 1. c. 3. Merchants of Genoa and the West.

whereby it is ordained or assented, "That all merchants of *Genoa Venice Catalonia Arragon* and of other realms lands and countries towards the west, being of the King's amity, that will bring to *Hampton* or elsewhere within the realm carracks ships gallies or other vessels charged or discharged may there freely sell their merchandizes to whom they please and there recharge their vessels with wools leather woolfells lead tin and other merchandizes of the staple and freely carry them into their country towards the west under the regulations in the said statute mentioned and

4 R. 2. c. 1. Gauging Wine, &c.

contained;"—and also, So much of a statute made in the fourth year of the reign of the said King *Richard* the Second, as relates to the gauging of all vessels of wine honey oil and other liquors brought into the realm;

5 R. 2. st. 1. c. 3. Subjects shall freight none but English Ships.

—and also, So much of a statute made in the fifth year of the reign of the said King *Richard* the Second, in a Parliament holden on the morrow after *All Souls*, whereby it is assented and accorded, "That none of the King's liege people do ship any merchandize in going out or coming within the realm of *England* in any port or any where, but only in ships of the King's ligeance; and that every person of the said ligeance which do ship and merchandize in any other ships or vessels upon the sea than of the said ligeance shall forfeit to the King all his merchandizes shipped in

5 R. 2. st. 2. c. 1. Freedom of Trade for Merchants in Amity.

other vessels or the value of the same;"—and also, So much of a statute made in the said fifth year of the reign of the said King *Richard* the Second, in the Parliament holden on the morrow of *Saint John Port Latin*, whereby it is accorded and assented, "That all manner of merchants strangers of whatsoever nation or country they be being of the amity of the King and of his realm shall be welcome and freely may come within the realm of *England* and elsewhere within the King's power as well within franchise as without and there to be conversant to merchandize and tarry as long as them liketh as those whom our said Lord the King taketh into his protection and safeguard with their goods merchandizes and all manner familiars; and that they and every of them with their merchandizes and all manner of goods be suffered to go and come without disturbance or impeachment of any;"—and also, So much of a statute made in the sixth

6 R. 2. st. 1. c. 8. Restraining the Operation of st. 5. R. 2. st. 1. c. 3. to Cases where English Ships may be found.

year of the reign of the said King *Richard* the Second, whereby it is ordained and granted, "That the statute made in the fifth year of the said King *Richard* the Second (and hereinbefore recited), that none of

the King's liege people do ship any merchandize but only in ships of the King's ligeance should only have place so long as ships of the said ligeance in the parts where the said merchants shall happen to dwell be found able and sufficient; so that then they shall be bound to freight the same ships of the King's ligeance with their merchandizes before all other ships; and otherwise it shall be lawful to the said merchants to hire other ships convenient and there to freight them with their goods and merchandizes notwithstanding the said first statute;"—and also, So much of the said last-mentioned statute, whereby it is ordained and accorded, "That all manner of foreigners and aliens being of the amity of the King and his realm and coming within the city of *London* and other cities boroughs and towns within the realm with fish and all manner of other victuals there tarrying and going again to their own countries shall be under the safeguard and special protection of our Lord the King; and that there it shall be lawful for them and every to cut their fishes and victuals aforesaid in pieces and in part or in all at retale or in gross as to them best shall seem to sell and make their profit;"—and also, So much of a statute made in the eleventh year of the reign of the said King *Richard* the Second, whereby it is ordained and established, "That the said statutes of the ninth and twenty-fifth years of the reign of King *Edward* the Third (hereinbefore recited and as recited in the said statute of the eleventh year of King *Richard* the Second) shall be firmly holden kept maintained and fully executed in all the points and articles of the same notwithstanding any ordinance statute charter letters patents franchise proclamation commandment usage allowance or judgment made or used to the contrary; and that if any such statute ordinance charter letters patents franchise proclamation commandment usage allowance or judgment be made or used to the contrary it shall be utterly repealed avoided and holden for none;"—and also, So much of the said statute made in the fourteenth year of the reign of the said King *Richard* the Second, whereby it is ordained and established, "That every person alien that bringeth any merchandize into *England* shall find sufficient sureties before the customers in the port where the merchandize shall be brought to buy other merchandize to the value of half the said merchandizes so brought at the least, as wools leather wool-fells lead tin butter cheese cloth or other commodities of the land;"—and also, So much of the said last-mentioned statute, whereby it is ordained and established, "That for every exchange that shall be made by merchants to the court of *Rome* or elsewhere the said merchants be bound in chancery to buy within three months after the said exchange made merchandizes of the staple or other commodities of the land to the value of the sums so exchanged upon pain of forfeiture of the same;"—and also, So much of the said last-mentioned statute whereby it is ordained and established, "That all merchants of the realm of *England* shall freight in the said realm the ships of the said realm and not strange ships, so that the owners of the said ships take reasonable gains for the freight of the same:"—and also, So much of the said statute made in the fourteenth year of the reign of King *Richard* the Second, whereby it is ordained and established, "That no customer nor comptroller have any ships of their own nor meddle with the freight of ships;"—and also, So much of a statute made in the sixteenth year of the reign of the said King *Richard* the Second, whereby it is ordained and assented, "That no merchant stranger alien shall sell nor buy nor merchandize with another strange merchant alien to sell again; nor that no stranger merchant alien shall sell to retail within the said realm nor shall put to sale any manner of wares or merchandizes, except livings and victuals; and also that all aliens shall sell wines by whole vessels and spiceries by whole vessels and bales and in no other manner;"—and also, So much of a statute made in the twentieth year of the reign of King *Richard* the Second, whereby it is granted or provided, "That so much of the said statute of the twenty-eighth year of the reign of King *Edward* the Third (as is hereinbefore recited and as is recited in the said statute of the twentieth year of King *Richard* the Second), shall be holden and kept in all points and duly executed notwithstanding any ordinance or usage to the contrary;"—and also, So much of a statute made in the first year of the reign

6 R. 2. st. 1. c. 10. Importation of Fish and Provisions by Aliens.

11 R. 2. c. 7. confirming 9 E. 3. st. 1. c. 1.: 25 E. 3. st. 3. (vulgo, st. 4. c. 2.) and Statutes to the contrary declared void.

14 R. 2. c. 1. Purchase of English Goods by Alien Merchants in return for Merchandize imported.

14 R. 2. c. 2. Purchasing English Goods on Exchanges.

14 R. 2. c. 6. Subjects shall freight English Ships, if at reasonable Freight.

14 R. 2. c. 10. Customers not to have Ships, &c.

16 R. 2. c. 1. Aliens not to deal with each other.

20 R. 2. c. 4. confirming 28 E. 3. c. 13.

1 H. 4. c. 17. confirming 6 R. 2. st. 1. c. 10.

No. I.
3 Geo. IV.
c. 41.

of King *Henry* the Fourth, whereby it is ordained and established, "That so much of the statute made in the sixth year of the reign of King *Richard* the Second (as is hereinbefore recited relating to fish and victuals imported by aliens) should be firmly holden and kept and duly executed after the form and effect thereof notwithstanding certain letters

4 H. 4. c. 15. Purchase of English Goods by Aliens.

patents granted to the contrary to the fishmongers of *London* by the said King *Richard* the Second;"—and also, So much of a statute made in the fourth year of the reign of the said King *Henry* the Fourth, whereby it is ordained and established, "That all the merchants aliens strangers and denizens which bring merchandizes into this realm of *England* and the same do sell within the realm and receive *English* money for the same that they shall bestow the same money upon other merchandizes of *England* for to carry the same out of the realm of *England* without carrying any gold or silver in coin plate or mass out of the said realm upon pain of forfeiture of the same, saving always their reasonable costs;"—and

4 H. 4. c. 20. Ports of Arrival, &c.

also, So much of the said statute made in the said fourth year of the reign of the said King *Henry* the Fourth, whereby it is ordained and established, "That all manner of merchandizes entering into the realm of *England* or going out of the same shall be charged and discharged in the great ports of the sea and not in creeks and small arrivals upon pain to forfeit all the merchandizes so charged or discharged to our Lord the King; except vessels of merchandizes arriving in such little creeks and arrivals

5 H. 4. c. 7. Treatment of Alien Merchants.

by cohertion of tempest of the sea;"—and also, So much of a statute made in the fifth year of the reign of the said King *Henry* the Fourth, whereby it is ordained and established, "That all the merchants strangers of what estate or condition that they be coming dwelling or repairing within the realm of *England* shall be entreated and demeaned within the same realm in the manner form and condition as the merchants denizens be, or shall be entreated and demeaned in the parts beyond the sea upon pain to forfeit to the King all the goods and chattels of such merchants strangers and upon pain of imprisonment of the

5 H. 4. c. 9. Alien Merchants to be superintended by Hosts.

bodies of such merchants strangers;"—and also, So much of the said last-mentioned statute whereby it is ordained and established, "That the customers and comptrollers in all the ports of *England* shall take sufficient sureties for all manner of merchandizes brought by the merchants aliens and strangers coming and repairing to the said ports to the intent that the money taken for the said merchandize shall be employed upon the commodities of the realm, saving their reasonable costs; and that the said merchants aliens and strangers shall sell their said merchandizes so brought within the said realm within a quarter of a year next after their coming into the same; and also that the money which shall be delivered by exchange in *England* be employed upon the commodities of the realm within the same realm upon pain of forfeiture of the same money; and that no merchant alien nor stranger sell any manner of merchandize to any other merchant alien or stranger upon pain of forfeiture of the said merchandize; and that in every city town and port of the sea in *England* where the said merchants aliens or strangers be or shall be repairing sufficient hosts shall be assigned to the same merchants by the mayor sheriffs or bailiffs of the said cities towns and ports of the sea, and that the said merchants aliens and strangers shall dwell in no

6 H. 4. c. 4. Repealing 5 H. 4. c. 9.

other place but with their said hosts so to be assigned;"—and also, So much of a statute made in the sixth year of the reign of the said King *Henry* the Fourth, whereby so much of the said statute of the fifth year of the said King *Henry* the Fourth as is hereinbefore last recited is repealed;—and also, So much of a statute made in the eleventh year of the

11 H. 4. c. 8. confirming and amending 14 R. 2. c. 2.

reign of the said King *Henry* the Fourth, whereby it is ordained and established, "That so much of the statute made in the fourteenth year of the reign of King *Richard* the Second as is hereinbefore recited respecting exchanges by merchants to the court of *Rome* or elsewhere should be firmly holden and kept and put in due execution;" with a certain addition thereto as in the said statute of the eleventh year of the said King

4 H. 5. c. 5. confirming 5 H. 4. c. 7.

Henry the Fourth is mentioned and set forth;—and also, So much of a statute made in the fourth year of the reign of King *Henry* the Fifth, whereby it is granted and provided, "That so much of the statute made

No. I.
3 Geo. IV.
c. 41.

in the fifth year of the reign of King *Henry* the Fourth as is hereinbefore recited shall be firmly holden and kept in all points and put in due execution according to the contents of the same;"—and also, So much of a statute made in the Parliament holden on the first day of *December* in the ninth year of the reign of the said King *Henry* the Fifth, and of a statute made in the first year of King *Henry* the Sixth, whereby it is ordained, "That all merchants that shall make exchanges to the court of *Rome* or elsewhere, shall be bound personally in the Chancery by recognizance to buy within nine months after the same exchanges made, merchandizes and commodities of *England* to the value of the sums so changed upon pain of forfeiture of the same;"—and also, So much of a statute made in the second year of the reign of King *Henry* the Sixth, whereby it is ordained and established, "That no man shall bring into the realm of *England* from what country soever it be, nor make within the said realm a tun of wine, except it contains of the *English* measure two hundred and fifty-two gallons, the pipe one hundred and twenty-six gallons, and so after the rate the tertian and the hogshead of *Gascoin* wine upon pain of forfeiture of the same wine; nor barrel of herring nor of eels, unless they contain thirty gallons fully packed, nor butt of salmon, unless it contain eighty-four gallons fully packed, nor kinderkins tertians and firkins of herring nor of eels nor of salmon, but after the rate fully packed upon pain of forfeiture of the said herring eels and salmon;"—and also, So much of a statute made in the eighth year of the reign of the said King *Henry* the Sixth, whereby it is ordained, "That no mariner stranger nor other mariner that is both owner and master of any ship or vessel, shall take nor receive within *England*, *Wales*, nor *Ireland*, in his ship or vessel any manner of wools woolfells nor other merchandizes of the staple, nor carry the same out of the realm to any port beyond the sea but only to the staple of *Calais*, except such which shall pass beyond the straits of *Marrok*; and that upon pain of forfeiture to the King as well of such ships and goods so found defective as of the goods of the said mariners being in the same ships or vessels;"—and also, So much of the said last-mentioned statute, whereby it is ordained, "That no merchant alien shall constrain nor bind any of the King's liege people, to make him payment in gold for any manner of debt which to him may be due, nor refuse to receive payment in silver for any manner of such duty or debt; and that no Englishman shall sell within the realm, or cause to be sold to any merchant alien any manner of merchandize, but only for ready payment in money or else in merchandizes for merchandizes, to be paid and contented in hand upon pain of forfeiture of the same;"—and also, So much of a statute made in the ninth year of the reign of King *Henry* the Sixth, as relates to the sale of cloths by *English* merchants to merchants aliens;—and also, So much of a statute made in the fourteenth year of the reign of the said King *Henry* the Sixth, whereby it is ordained and established, "That so much of the statutes made in the sixth year of the reign of King *Richard* the Second and in the first year of the reign of King *Henry* the Fourth, as is hereinbefore recited relating to fish and victuals imported by aliens, should be firmly holden and kept; any other statutes or ordinances made to the contrary notwithstanding;" with a certain addition to the said statutes as in the said statute of the fourteenth year of King *Henry* the Sixth is mentioned and set forth;—and also, So much of the last-mentioned statute made in the fourteenth year of the reign of the said King *Henry* the Sixth, whereby it is granted and ordained, "That if it happen that any merchandizes of aliens of the King's amity to be taken by the King's lieges in any ships or vessels of the King's enemies, not being under the King's safe conduct or protection, that the said lieges may them retain and enjoy without any impeachment or restitution thereof to be made;"—and also, So much of a statute made in the eighteenth year of the reign of King *Henry* the Sixth, whereby it is ordained, "That no merchant alien or stranger shall sell no manner of merchandize to other merchant alien or stranger, upon pain of forfeiting of the same merchandizes; and that all merchants aliens and strangers

9 H. 5. st. 2. c. 9.
1 H. 6. c. 6. amending 14 R. 2. c. 2. as to purchasing English Goods by Aliens.
2 H. 6. c. 14. (vulgo 11.) Measure of Tuns, &c. of Wine; Barrels, &c. of Herrings, Eels, and Salmon.
8 H. 6. c. 19. Trade beyond the Straits of Morocco, [Gibraltar.]
8 H. 6. c. 24. Payments in Gold to Aliens prohibited, &c.
9 H. 6. c. 2. Sale of Cloths to Aliens.
14 H. 6. c. 6. confirming 6 R. 2. st. 1. c. 10. 1 H. 4. c. 17.
14 H. 6. c. 7. Prize Goods.
18 H. 6. c. 4. Aliens shall not sell to Aliens.

No. I.
3 Geo. IV.
c. 41.

coming or abiding to merchandize within any city town borough or port in *England*, shall be under the surveying of certain people to be called hosts or surveyors, to them to be assigned in manner directed by the said statute;" and also, So much and all such parts of the said statute as relate to such merchants aliens and their hosts;—and also, So much of the said last-mentioned statute, whereby it is ordained and granted, "That merchants aliens at their pleasure may charge ships and vessels of *Spain* and of other parts taken from adversaries and enemies of the King, in manner and under the regulations in the said statute mentioned and provided;"—and also, So much of the said last-mentioned statute of the eighteenth year of King *Henry* the Sixth, as relates to the gauging of vessels of wine oil and honey;—and also, So much of a statute made in the twentieth year of the reign of the said King *Henry* the Sixth, whereby it is ordained and established, "That no customer nor comptroller of the customs clerks deputies or ministers or their servants or factors nor searchers nor comptrollers nor surveyors of searchers, nor their clerks deputies ministers or factors shall have any ships of their own, nor shall buy or sell by way or by colour of merchandize, nor shall not meddle with freighting of ships, nor have or occupy any wharfs or quays, nor hold any hosteries or taverns, nor shall be any factors or attornies for merchants denizen or alien, nor shall be host to any merchant alien;"—and also, So much of a statute made in the twenty-third year of the reign of King *Henry* the Sixth, as relates to the duty of a gauger or to the penny called the gauge-penny;—and also, So much of a statute made in the twenty-seventh year of the reign of the said King *Henry* the Sixth, whereby the importation of merchandize of the growing or workmanship of *Brabant Holland* and *Zealand* was prohibited or restrained;—and also, So much of the said statute made in the twenty-seventh year of the reign of the said King *Henry* the Sixth, whereby it is ordained, "That if any merchants aliens and strangers bring wheat corn or any other merchandizes or victual into any haven port or creek or other places of this realm, that the mayors bailiffs port-reves customers comptrollers and searchers and other officers of the said port haven or creek or other places, shall have authority to seize all ships barges and vessels freighted with wheat corn or any other merchandizes or victual brought into this realm to sell, and to take security of all the said merchants aliens and strangers that the money which shall be taken or received for the said wheat corn and other merchandizes or victual shall be employed upon the merchandizes and commodities of this realm;"—and also, So much of a statute made in the twenty-eighth year of the reign of the said King *Henry* the Sixth, whereby the provisions of so much of the said recited statute of the twenty-seventh year of the said King *Henry* the Sixth, as relates to importation from *Brabant Holland* and *Zealand* are continued in force;—and also, So much of a statute made in the thirty-third year of the reign of the said King *Henry* the Sixth, whereby it is ordained and established, "That if any *Lombard* or any other person stranger or denizen bring or cause to be brought by way of merchandize, any wrought silk thrown ribbands laces corses of silk or any other thing wrought, touching or concerning the mystery of silk women, the corses which come from *Genoa* only excepted, into any port or place of the realm from beyond the sea, that the same wrought silk thrown ribbands laces corses and other things so brought and wrought concerning the same mysteries shall be forfeit;"—and also, So much of the said statute whereby any penalty is imposed in respect of such importation or as authorizes the appointment of any searchers for things so imported;—and also, So much of a statute made in the third year of the reign of King *Edward* the Fourth, whereby it is ordained and established, "That no person inhabiting within the realm other than merchant strangers, shall freight nor charge within the realm of *England* or *Wales* any ship or other vessel of any alien or stranger with any merchandizes to be carried out of the said realm or *Wales* or to be brought into the same if he may have sufficient freight in the ships or vessels of the denizens of this realm, upon pain to forfeit the same merchandizes;"—and also, So much of the said statute made in the third year of the reign of King *Edward* the

18 H. 6. c. 8. Freighting of Prize Ships.

18 H. 6. c. 17. Gauging Vessels.

20 H. 6. c. 5. Customers not to be Owners of Ships.

23 H. 6. c. 15. Gaugers.

27 H. 6. c. 1. Goods of Brabant, &c.

27 H. 6. c. 3. Purchasing English Goods by Aliens.

28 H. 6. c. 1. Goods of Brabant, &c.

33 H. 6. c. 5. Foreign wrought Silk, Ribbands, &c. prohibited.

3 E. 4. c. 1. (ad finem.) Subjects shall not freight Foreign Ships, if sufficient Freight can be had in English.

3 E. 4. c. 3. Wrought Silks.

Fourth, whereby the importation of any wrought silk thrown ribbands laces corses of silk or other things wrought concerning the craft of silk women is prohibited or restrained;—and also, So much of a statute made in the fourth year of the reign of the said King *Edward* the Fourth, whereby it is ordained and established, "That all manner of woollen cloths made in any other region brought into this realm and set to sale within any part of this realm, shall be forfeit to our Sovereign Lord the King, except cloths made in *Wales* and *Ireland* and cloths taken by any of the King's liege people upon the sea without fraud or collusion;"—and also, So much of the said statute made in the fourth year of the reign of the said King *Edward* the Fourth, as relates to the importa ion of merchandize from *Brabant Holland* and *Zealand* or from the dominions of the Duke of *Burgundy*;—and also, So much of the said statute made in the fourth year of the reign of said King *Edward* the Fourth, as relates to the surety to be given by alien merchants for employing their money in purchase of *English* commodities;—and also, So much of a statute made in the twelfth year of the reign of the said King *Edward* the Fou.th, whereby it is ordained and established, "That every merchant stranger and every or any of their factors attornies or servants, which shall brin- or convey into this land any merchandize in carrack galley or ship from the city or country of *Venice*, or from any other city town or country from whence bow-staves had before that time been brought sent or conveyed into this land, at every time of their bringing sending or conveying of any such merchandizes into this realm, shall bring send or convey into this realm with the said merchandizes in the same carrack galley or ship wherein any such merchandizes shall be brought sent or conveyed, for every tuntight or tun weight of such merchandizes which shall be contained in any carrack galley or ship four bow-staves;"—and also, So much of the said statute whereby any penalty is imposed or any search is authorized with respect to such bow-staves;—and also, So much of a statute made in the seventeenth year of the reign of the said King *Edward* the Fourth, whereby it is ordained, "That every merchant alien and every victualler and other stranger not being denizen, which shall resort into any place or port of the realm of *England* or *Wales*, shall duly employ all the money to be received by him within any part of the said realm or *Wales* upon merchandizes or other commodities of this realm or without any fraud he shall put the same in due payment to the King's liege people within this realm, the same employment or payment duly to be proved in manner mentioned in the said recited statute, upon pain of forfeiture of all his goods being within this realm and one year's imprisonment;"—and also, So much of the said last-mentioned statute as relates to the recovery of any penalties or forfeitures for offences against so much of the said statute as is hereinbefore recited;—and also, So much of a statute made in the twenty-second year of the reign of the said King *Edward* the Fourth, whereby it is ordained and established, "That no merchant stranger nor other person shall bring into the realm to be sold any corses girdles ribbands laces call-silk or colein-silk thrown or wrought, upon pain of forfeiture of the same or the value thereof:—And, So much and such parts of the said several statutes as are hereinbefore recited and set forth are hereby accordingly repealed, and from and after the passing of this Act shall cease and determine and be of no force effect or validity whatsoever; any thing in the said recited statutes or any of them or in any statute or Act for continuing or making perpetual or amending of the said statutes or any of them or any part thereof, or any law usage or custom whatsoever to the contrary in anywise notwithstanding: Except only so far as the same statutes or any of them or any thing therein contained, repeal any former statute or statutes or any part thereof; and all and every which said statutes or statute or the part thereof so repealed shall remain and continue repealed to all intents and purposes whatsoever.

4 E. 4. c. 1. (ad finem.) Importation of Foreign Cloths prohibited.

4 E. 4. c. 5. Goods of Brabant.

4 E. 4. c. 6. Surety by Alien Merchants.

12 E. 4. c. 2. Importing Bow-staves by Foreign Merchants of Venice, &c.

17 E. 4. c. 1. Purchase of English Goods by Aliens.

22 E. 4. c. 3. Wrought Silk.

So much as is recited of the said preceding Statutes repealed, and shall cease and determine.

Except as they repeal former Statutes.

II. And be it further enacted, That from and after the passing of this Act the several Acts hereinafter mentioned relating to the importation of goods or to commerce or navigation or so much and such parts of them

Certain Acts relating to Importation, &c. repealed.

No. I.
3 Geo. IV.
c. 41.

as are hereinafter specified shall be repealed; (that is to say) The whole of an Act made in the first year of the reign of King *Richard* the Third, intituled *An Act touching the Merchants of* Italy, or so much thereof as shall be in force and unrepealed immediately before the passing of this Act;—and also another Act made in the said first year of the reign of King *Richard* the Third, intituled *An Act touching the bringing in of Silk, Laces, Ribbands, &c.*;—and also another Act made in the said first year of the reign of the said King *Richard* the Third, intituled *An Act touching Bowyers*;—and also another Act made in the said first year of the reign of King *Richard* the Third, intituled *An Act for the Contents of a Butt of Malmsey*, or *An Act to ascertain the Contents of Vessels of Wine and Oil*;—and also an Act made in the first year of the reign of King *Henry* the Seventh, intituled *An Act that Denizens shall pay Customs and Subsidies*;—and also another Act made in the first year of the reign of the said King *Henry* the Seventh, intituled *An Act against bringing in of* Gascoigne *Wine except in* English Irish *or* Welshmen's *Ships*;—and also an Act made in the said first year of the reign of the said King *Henry* the Seventh, intituled *An Act against Merchant Strangers for bringing into this Realm Girdles, Ribbands, Laces, &c.*;—and also an Act made in the third year of the reign of the said King *Henry* the Seventh, intituled *An Act for Confirmation of a Statute made in the Seventeenth Year of* Edward *the Fourth, against carrying out of this Realm Money for Wares brought into the same*; or so much of the said Act of the third year of the reign of King *Henry* the Seventh as shall be in force and unrepealed immediately before the passing of this Act;—and also an Act made in the Parliament begun to be holden at *Westminster* on the thirteenth day of *January* in the fourth year of the reign of the said King *Henry* the Seventh, intituled *An Act against bringing into this Realm Wines in Foreign Bottoms*; or so much thereof as shall be in force and unrepealed immediately before the passing of this Act;—and also an Act made in the seventh year of the reign of King *Henry* the Seventh, intituled *An Act to pay Custom for every Butt of Malmsey*;—and also an Act made in the eleventh year of the reign of the said King *Henry* the Seventh, intituled *An Act that all Strangers and Denizens shall pay Customs*;—and also, So much of an Act made in the eleventh year of the reign of the said King *Henry* the Seventh, intituled *An Act against taking of Feasants and Partridges*, whereby it is ordained, "That all such persons that bring any niesse hawk or hawks from any of the parts beyond the sea bring a certificate under the customer's seal of the port where he first landed with the said hawk or hawks testifying that the same hawk or hawks be of the parts beyond the sea upon pain of forfeiture of the said hawk or hawks to the King;"—and also an Act made in the twelfth year of the reign of the said King *Henry* the Seventh for merchants adventurers, or intituled *An Act for Merchants Adventurers*;—and also the whole of an Act made in the nineteenth year of the reign of the said King *Henry* the Seventh for sylke women, or intituled *An Act for Silk Women*;—and also another Act made in the said nineteenth year of the reign of the said King *Henry* the Seventh, for the still-yard, or intituled *An Act for the* Hanse *Merchants*;—and also an Act made in the first year of the reign of King *Henry* the Eighth, intituled *An Act for the true Payment of the King's Customs*;—and also an Act made in the fourteenth and fifteenth years of the reign of the said King *Henry* the Eighth, intituled *An Act for Payment of Customs*;—and also an Act made in the twenty-second year of the reign of the said King *Henry* the Eighth, intituled *An Act for Denizens to pay Strangers Customs*;—and also an Act made in the twenty-third year of the reign of the said King *Henry* the Eighth, intituled *An Act that the Statutes made for the Maintenance of the Navy of this Realm shall stand in full Strength, and how* Gascoigne *and* French *Wines shall be brought in, and the same and other Wines sold*;—and also, So much of an Act made in the twenty-fifth year of the reign of the said King *Henry* the Eighth, intituled *An Act concerning Pewterers*; whereby it is enacted,

1 R. 3. c 9. Italian Merchants.
1 R. 3. c. 10. Wrought Silk.
4 R. 3. c. 11. Importing Bow-staves.
1 R. 3. c. 13. Contents of Wine Vessels, &c.
1 H. 7. c. 2. Denizens.
1 H. 7. c. 8. Importing Wines of Gascony in English Ships.
1 H. 7. c. 9. Wrought Silk.
3 H. 7. c. 8. confirming 17 E. 4. c. 1.
4 H. 7. c. 10. Wine and Woad to be imported in English Ships.
7 H. 7. c. 8. Wine
11 H. 7. c. 14. Denizens.
11 H. 7. c. 17. § 3. Foreign Hawks.
12 H. 7. c. 6. Merchants Adventurers.
19 H. 7. c. 21. Articles of Foreign Wrought Silk.
19 H. 7. c. 23. Privileges to the Hanse Merchants.
1 H. 8. c. 5. Customing Goods in others Names.
14, 15 H. 8. c. 4. Denizens.
22 H. 8. c. 8. Denizens.

23 H. 8. c. 7. Confirming former Navigation Acts. 25 H. 8. c. 9. § 1, 2. Importation of Tin and Pewter Wares prohibited.

No. I.
3 Geo. IV.
c. 41.

" That no person thereafter at any time then inhabiting or which thereafter should inhabit within this realm should buy or otherwise take by exchange for other wares any manner of wares made out of the realm of tin or mixed with tin or any thing made of tin or pewter," as in the said Act is mentioned upon pain of the forfeiture in the said Act mentioned; and also, So much of the said Act whereby it is enacted, " That it should be lawful for the wardens of the craft of pewterers and other officers in the said Act mentioned to appoint persons to make search and seizure and to take into their hands and possession all such wares as should be brought contrary to the true intent and effect of the said Act in whosesoever hands or possession any such should be found;"—and also, So much of an Act made in the said twenty-fifth year of the reign of King *Henry* the Eighth, intituled *An Act for Printers and Binders of Books;* whereby it is enacted, " That no person or persons resiant or inhabitant within the realm shall buy to sell again any printed book brought from any parts out of the King's obeisance ready bound in boards leather or parchment; nor shall buy within the realm of any stranger born out of the King's obeisance other than of denizens any manner of printed books brought from any the parts beyond the sea, except only by engross and not by retail under the pains and forfeitures in the said Act mentioned;"—and also an Act made in the twenty-seventh year of the reign of the said King *Henry* the Eighth, *An Act concerning the Custom of Leather;*—and also the whole of an Act made in the thirty-second year of the reign of the said King *Henry* the Eighth, intituled *The Maintenance of the Navy;* or *An Act for the Maintenance of the Navy of England, and for certain Rates of Freight;*—and also an Act made in the thirty-third year of the reign of the said King *Henry* the Eighth, intituled *An Act concerning buying of Fish upon the Sea*, or *The Bill concerning buying of Fish upon the Sea;*—and also, So much of another Act made in the thirty-third year of the reign of the said King *Henry* the Eighth, intituled *An Act concerning Pewterers;* whereby any article sentence or clause therein and hereinbefore recited contained in the said hereinbefore recited Act of the twenty-fifth year of the reign of the said King *Henry* the Eighth is made perpetual;—and also, So much of the said Act of the thirty-third year of King *Henry* the Eighth, whereby it is enacted, " That no person or persons buy or take by exchange or otherwise take into or within the realm to the intent to sell any things or wares of tin or pewter in the said Act rehearsed made or to be made out of the realm;"—and also, So much of the said last-mentioned Act whereby any penalty or forfeiture is imposed on any person or persons who shall unlawfully withstand interrupt disturb or let the master and wardens or their deputy of the craft of pewterers or other officers in the said Act named in searching seizing and taking into their hands and possession such wares as shall happen to be bought or brought into the realm contrary to the purport and effect of the said Act made in the twenty-fifth year of the reign of King *Henry* the Eighth;—and also the whole of an Act made in the Parliament holden in the second and third years of the reign of King *Edward* the Sixth, intituled *An Act for the colouring Customs in other Men's Names;*—and also the whole of an Act made in the Parliament holden in the fifth and sixth years of the reign of the said King *Edward* the Sixth, intituled *An Act repealing a Statute made in the Fourth Year of King* Henry *the Seventh, against the bringing in of Wine and Woad in Strange Bottoms;*—and also, So much of an Act made in the first year of the reign of Queen *Elizabeth*, intituled *An Act limiting the Times for laying on Land Merchandize from beyond the Seas, and touching Customs for Sweet Wines;* whereby it is enacted, " That no person denizen ne stranger do take upon him to enter or do or cause to be entered into the books of any customers or other officer or officers of any port or haven within this realm or his or their deputy or deputies servant or servants any manner of goods wares or merchandizes whatsoever coming or brought into the realm from any ports beyond the sea or going or to be transported out of the realm into any the parts beyond the sea in the name or names of any other person or persons than the very true owner

25 H. 8. c. 15. §§ 2. 3. Foreign bound Books.

27 H. 8. c. 14. Leather.

32 H. 8. c. 14. Navigation Acts, Freights.

33 H. 8. c. 2. Buying Fish at Sea.

33 H. 8. c. 4. Tin Wares, &c. confirming 25 H. 8. c. 9. §§ 1. 2.

2, 3 E. 6. c. 22. Customing Goods in others Names.

5, 6 E. 6. c. 18. Wine and Woad, amending 4 H. 7. c. 10.

1 El. c. 11. § 5. (vulgo § 6.) Customing Goods in others Names.

No. I.
3 Geo. IV.
c. 41.

or owners of the same goods wares or merchandizes upon pain of forfeiture of the value of the goods so entered;"—and also an Act made in the said first year of the reign of Queen *Elizabeth*, intituled *An Act for the shipping in* English *Bottoms;* —and also, So much of an Act made in the fifth year of the reign of the said Queen *Elizabeth*, intituled *An Act touching politic Constitutions made for the Maintenance of the Navy*, whereby it is enacted, "That it shall not be lawful to any person or persons to buy of any stranger or out of any stranger's bottom any herring being not sufficiently salted packed and casked;"—and also, So much of the said Act whereby it is enacted, "That all *English* hoys and plats may cross the seas as far as *Caen* in *Normandy* and eastward as far as *Norway;*"—and also, So much of the said Act whereby it is enacted, "That it shall not be lawful to any person or persons to bring into the realm any cod or lings in barrels or other casks, but loose in bulk and by tale to be sold within the realm;"—and also, So much of the said Act whereby it is enacted, "That no person or persons whatsoever shall bring into the realm of *England* or any part of the same any wine coming out of any of the dominions or countries belonging to the crown of *France* or any woad called *Thoulouse* woad in any other vessel or vessels, but only in such vessel and vessels whereof some subject or subjects of the Queen's Majesty her heirs or successors shall be then only owner or part owner;" —and also, So much of an Act made in the thirteenth year of the reign of the said Queen *Elizabeth*, intituled *An Act against the bringing in and putting in Execution of Bulls and other Instruments from the See of* Rome, whereby any danger penalty pain or forfeiture may be incurred by or inflicted upon any person or persons who shall bring into the realm of *England* or any of the dominions of the same any token or tokens or thing or things called or named by the name of an *Agnus Dei*, or any crosses pictures beads or such like vain and superstitious things from the bishop or see of *Rome* or from any person or persons authorised or claiming authority by or from the said bishop or see of *Rome* to consecrate or hallow the same; or by or upon any person or persons so bringing in as is aforesaid such *Agnus Dei* and other things before specified who shall deliver or cause or offer to be delivered the same or any of them to any subject of the realm or of any dominions of the same to be worn or used in anywise;—and also the whole of an Act made in the said thirteenth year of the reign of the said Queen *Elizabeth*, intituled *An Act for the Maintenance of the Navigation;*—and also another Act made in the said thirteenth year of the reign of the said Queen *Elizabeth*, intituled *An Act for the bringing of Bow Staves into this Realm;*—and also another Act made in the said thirteenth year of the reign of the said Queen *Elizabeth*, intituled *An Act that no Hoy or Plat shall cross the Seas;*—and also an Act made in the twenty-third year of the reign of the said Queen *Elizabeth*, intituled *An Act for the Increase of Mariners, and for the Maintenance of Navigation;*—and also an Act made in the twenty-seventh year of the reign of Queen *Elizabeth*, intituled *An Act for bringing in of Staple Fish and Herrings into this Realm;*—and also an Act made in the Parliament of *Ireland* in the twenty-eighth year of the reign of Queen *Elizabeth*, intituled *An Act of Impost and Custom of Wines;*—and also an Act made in the thirty-ninth year of the reign of the said Queen *Elizabeth*, intituled *An Act for the Increase of Mariners and Maintenance of the Navigation, repealing a Statute made in the Twenty-third Year of her Majesty's Reign, bearing the same Title;*—and also, So much of an Act made in the first year of the reign of King *James* the First, intituled *An Act for avoiding of deceitful selling buying or spending corrupt and unwholesome Hops*, whereby it is enacted, "That if any foreigner stranger native *Englishman* denizen merchant or any other person or persons whomsoever do bring or cause to be brought into *England* from any foreign realm or dominion beyond the sea any hops being deceitfully or corruptly unclean corrupt or mixed with any powder dust dross sand or any other soil whatever, that every person so offending shall forfeit the same hops so brought into the realm;" —and also, So much of an Act made in the third year of the reign of the

1 El. c. 13. Shipping in English Vessels.

5 El. c. 5. § 5. (vulgo) §§ 6. 7. Sale of Foreign Fresh Herrings prohibited.

§ 6. (vulgo § 9.) Small English Ships in Foreign Trade.

§ 7. (vulgo § 10.) Importing Cod in Bulk.

§ 8. (vulgo § 11.) French Wines and Woad to be imported in English Ships.

13 El. c. 2. § 4. (vulgo § 7.) Importation of Popish Relics prohibited.

13 El. c. 11. Navigation confirming 5 El. c. 5. § 5.

13 El. c. 14. Bow-staves.

13 El. c. 15. Small English Ships in Foreign Trade prohibited.

23 El. c. 7. Sale of Fish by Foreigners prohibited.

27 El. c. 15. Importation of Fish.

(Irish Act) 28 El. c. 4. Importing Wines.

39 El. c. 10. Fish.

1 Jac. 1. c. 18. § 1. Unclean Foreign Hops.

said King *James* the First, intituled *An Act to prevent and avoid Dangers which may grow by Popish Recusants*, whereby it is enacted, "That no person or persons shall bring from beyond the seas nor shall print sell or buy any popish primers ladies' psalters manuells rosaries popish catechisms missals breviaries portals legends and lives of saints, containing superstitious matters printed or written in any language whatsoever, nor any other superstitious books printed or written in the *English* tongue upon pain of forfeiture of forty shillings for every such book,"—and also the whole of an Act made in the said third year of the reign of the said King *James* the First, intituled *An Act to enable all his Majesty's loving Subjects of* England *and* Wales, *to trade freely into the Dominions of* Spain, Portugal, *and* France,—and also, So much of an Act made in the sixteenth year of the reign of King *Charles* the First, intituled *An Act for the free bringing in of Gunpouder and Saltpetre from foreign Parts, and for the free making of Gunpowder in this Realm*, whereby it is declared and enacted, "That it shall and may be lawful to and for all and singular persons as well strangers as natural born subjects of this realm to import and bring into the kingdom any quantities of gunpowder whatsoever paying such customs and duties for the same as by authority of Parliament shall be limited and set down" And the said several Acts beforementioned and so much and such parts of any of the Acts as are herembefore recited and set forth are hereby accordingly repealed and from and after the passing of this Act shall cease and determine and be of no force effect or validity whatsoever; any thing in the said recited Acts or any of them or in any Act or Acts for continuing or amending of the said Acts or any of them or any part thereof, or any law usage or custom whatsoever to the contrary in anywise notwithstanding, except only so far as the said Acts or any of them or any thing therein contained repeal any former statute or statutes or Act or Acts or any part thereof, and all and every which said statutes or statute or Act or Acts or the part thereof so repealed shall remain and continue repealed to all intents and purposes whatsoever.

3 Jac. 1 c. 6. Free Trade with Spain and Portugal.

16 C 1. c. 21. Gunpowder.

Recited Acts, or Parts thereof, repealed accordingly.

Except so far as they repeal former Acts, which shall remain repealed.

III. And be it further enacted, That from and after the passing of this Act so much and such parts of the several statutes hereinafter mentioned and recited relating to the exportation of goods wares and merchandize as are hereinafter specified and set forth shall be repealed, that is to say, So much of a statute made in the twenty-seventh year of the reign of King *Edward* the First, concerning false money, whereby it is ordained, "That no good money of silver of the King's coin or any other nor any silver in plate or otherwise shall go or be carried forth of the realm nor out of the King's jurisdiction into foreign parts without the King's special licence,"—and also, So much of a statute made in the ninth year of the reign of King *Edward* the Third, whereby it is provided, "That merchants aliens shall carry no wine out of the realm,"—and also, So much of a statute made in the eleventh year of the reign of the said King *Edward* the Third, whereby it is accorded, "That no merchant foreign or denizen nor none other of what estate or condition that he be upon pain of forfeiture of life and member and of as much as he may forfeit towards the King shall carry or cause to be carried by himself nor by other privily nor openly any wools to any place out of the realm, till by the King and his council it be thereof otherwise provided,"—and also, So much of a statute made in the fourteenth year of the reign of the said King *Edward* the Third, whereby it is granted or provided, "That every man that shippeth wools over the sea *Englishman* or other resiant inhabiting or repairing in *England* shall find good and sufficient surety to the customers to bring again of every sack of wool plate of silver to the value of two marks at his first return or repairing or within the three months after the wools so shipped shall pass out of the port, and to bring the same plate to the King's exchange and there to receive his money,"—and also, So much of the statute or ordinance of the staples made in the twenty-seventh year of the reign of the said King *Edward* the Third, whereby it is granted or provided, "That no merchant *English Welsh*

Parts of certain Statutes relative to Exportation as herein recited shall be repealed.

27 E. 1. Exporting Money or Plate.

9 E. 3 st. 1. c. 1. Wines.

11 E 3. c. 1. Wools.

14 E 3. st 1. c. 21. and st 2. c 4. Exporters of Wool to import Silver.

Statute of the Staples. 27 E. 3. st 2.

No. I.
3 Geo. IV. c. 41.

nor *Irish* shall carry any manner of wools leather woolfells or lead out of the King's realm and lands;"—and also, So much of the said statute or ordinance as relates to any covin or collusion fraud or deceit with respect to the carrying out the said wares and merchandizes or to the receiving payment for the sale thereof by or on behalf of such merchants; or so much and such parts of the said statute or ordinance as are in force or effect relating to such exportation immediately before the passing of this Act;—and also, So much of a statute made in the twenty-eighth year of the reign of the said King *Edward* the Third, whereby it is accorded and established, "That iron made in *England* and iron brought into *England* and there sold shall not be carried out of the said realm of *England* upon pain of forfeiting the double to the King;"—and also, So much of a statute made in the thirty-sixth year of the reign of the said King *Edward* the Third, whereby it is granted or provided, "That the merchants denizens may pass with their wools as well as foreigners without being restrained;" —and also, So much of a statute made in the forty-third year of the reign of the said King *Edward* the Third, whereby it is ordained or provided, "That wools leather woolfells and all other wools may be carried out of the realm by aliens to what part shall please them at their wills and not by denizens;"—and also, So much of a statute made in the fiftieth year of the reign of the said King *Edward* the Third, whereby it is ordained, "That no woollen cloths shall be carried out of any part of the realm of *England* before they be fulled;"—and also, So much of a statute made in the fourteenth year of the reign of King *Richard* the Second, whereby it is ordained and established, "That no denizen carry wools leather woolfells nor lead out of the realm of *England* to the parts beyond the sea upon pain of forfeiture of the same, but only strangers;"—and also, So much of a statute made in the sixteenth year of the reign of the said King *Richard* the Second, whereby it is ordained and assented, "That no manner of spicery after that it be brought into the realm shall be carried out of the same realm by alien or denizen upon pain of forfeiture of the same;"—and also, So much of a statute made in the seventeenth year of the reign of the said King *Richard* the Second, whereby it is ordained and established, "That the merchants or workers of cloths called single worsted may carry bolts of single worsted to what parts they will, except to the King's enemies; provided, that under the colour of the said bolts of single worsted they shall carry no double worsteds nor half double no worsteds ray nor motley upon pain of forfeiture of the same;"—and also, So much of a statute made in the fourth year of the reign of King *Henry* the Fourth as relates to the confirmation of any former ordinances and statutes prohibiting the sending or carrying out of the realm of any money or gold or silver in money plate or vessel or to any forfeiture for the same;—and also, So much of a statute made in the sixth year of the reign of the said King *Henry* the Fourth, whereby it is provided, "That merchants aliens and strangers shall not carry or cause to be carried out of the realm any merchandizes brought within the realm by merchants aliens and strangers;"—and also, So much of a statute made in the eighth year of the reign of King *Henry* the Fifth, whereby it is ordained and established, "That every merchant stranger buying wools in *England* to carry them to the west parts or elsewhere not coming to the staple there to be sold shall bring to the master of the mint of the tower of *London* of every sack one ounce of bullion of gold and in the same manner of three pieces of tin one ounce of bullion of gold or the value in bullion of silver upon pain of forfeiture of the same wools and tin or the value of the same to the King;—and also, So much of a statute made in the third year of the reign of King *Henry* the Sixth, whereby it is ordained and granted, "That no manner of person of what estate or condition that he be, be suffered to ship or cause to be shipped within the realm of *England* any sheep fleeced or shorn into the country of *Flanders* or to any other parts beyond the sea;"—and also, So much of the said statute made in the third year of the reign of King *Henry* the Sixth, as relates to the exporting of butter and cheese;—and also, So much of a statute made in the eighth year of the reign of the said King *Henry* the Sixth,

28 E. 3. c. 5. Iron.

36 E. 3. st. 1. c. 11. Wools.

43 E. 3. c. 1. Wools by Aliens.

50 E. 3. c. 7. Cloths not fulled.

14 R. 2. c. 5. Wools, &c. not to be exported by Denizens.

16 R. 2. c. 1. Spiceries.

17 R. 2. c. 3. Single Worsteds.

4 H. 4. c. 16. Exporting Gold and Silver.

6 H. 4. c. 4. Foreign Goods by Aliens.

8 H. 5. c. 2. Importing Bullion, &c. for Woolsexported.

3 H. 6. c. 2. Sheep

3 H. 6. c. 4. Exporting Butter.

8 H. 6. c. 23. Thrums.

whereby it is ordained, "That no man shall carry or convey out of the realm any manner of thrums nor threads of wool called woollen yarn under colour of thrums upon pain to forfeit the double value of the same;"—and also, So much of a statute made in the eighteenth year of the reign of the said King *Henry* the Sixth, whereby it is ordained, "That the King's liege people may convey and carry out of this realm whither it shall please them of the King's amity cheese and butter without any licence to be sued in anywise any statute made to the contrary notwithstanding: Provided that the King may restrain the same when it shall please him;"—and also, So much of a statute made in the twenty-third year of the reign of the said King *Henry* the Sixth, whereby it is ordained, "That no man shall pack nor ship any thrums nor woollen yarn in anywise to be had or to pass out of *England* beyond the sea upon the penalties and forfeitures in the said statute mentioned and contained;"—and also, So much of a statute made in the third year of the reign of King *Edward* the Fourth as in any manner relates to or concerns the buying or selling any manner of wools or woolfells morling or shorling within any part of the realm; or to the shipping carrying or exporting of any wools woolfells morling or shorling at or from any place within the realm to any place out of the realm by any alien or stranger or by any denizen or any other the King's subjects; or as imposes any penalty or forfeiture with respect to any such buying selling shipping carrying or exporting of any such wool woolfells morling or shorling respectively;—and also, So much of a statute made in the seventh year of the reign of the said King *Edward* the Fourth, whereby it is ordained and established, "That no person denizen or stranger shall carry or cause to be carried into any parts beyond the sea any woollen yarn or cloth not fulled upon the penalties and forfeitures in the said Act mentioned;"—and also, So much of a statute made in the seventeenth year of the reign of the said King *Edward* the Fourth, whereby it is ordained, That no person shall carry or cause to be carried out of the realm any manner of money of the coin of the realm nor money of the coin of any other realms lands or seignories nor no plate vessel mass bullion nor jewels of gold wrought or unwrought or of silver without the King's licence upon pain of felony;—and, So much and such parts of the said several statutes as are hereinbefore recited and set forth are hereby accordingly repealed; and from and after the passing of this Act shall cease and determine and be of no force effect or validity whatsoever, any thing in the said recited statutes or any of them or in any statute or statutes or Act or Acts for continuing or making perpetual or amending of the said statutes or any of them or any part thereof or any law usage or custom whatsoever to the contrary in anywise notwithstanding: except only so far as the said statutes or any of them repeal any former statute or statutes or any part thereof; and which said statute or statutes or any part thereof so repealed shall remain and continue repealed to all intents and purposes whatsoever.

18 H. 6. c. 3. Butter and Cheese.

23 H. 6. c. 2. Thrums.

3 E. 4. c. 1. Wools.

7 E. 4. c. 3. Woollen Yarn.

17 E. 4. c. 1. Exporting Money.

So much of preceding Statutes as is recited, repealed accordingly, and shall cease and determine.

Except as they repeal former Statutes, which shall remain repealed.

IV. And be it further enacted, That from and after the passing of this Act the several Acts hereinafter mentioned, relating to the exportation of goods wares and merchandize or so much and such parts of any of them as are hereinafter specified shall be repealed; (that is to say), An Act made in the third year of the reign of King *Henry* the Seventh, intituled *An Act that no Stranger or Denizen shall carry any Woollen Cloths out of this Realm before they be barbed rowed and shorne*;—and also, an Act made in the eleventh year of the reign of the said King *Henry* the Seventh, intituled *An Act against transporting of Horses and Mares beyond the Seas*;—and also, So much of an Act made in the third year of the reign of King *Henry* the Eighth, intituled *An Act concerning shooting in Long Bows*, whereby it is enacted or provided, "That no stranger born out of the King's obeysance not being denizen shall not convey nor do to be conveyed into any parts out of the King's obeysance any long bows arrows or shafts without the King's especial licence, upon pain of forfeiture of the same and upon pain of imprisonment;"—and also, an Act made in the third year of the reign of King *Henry* the Eighth, intituled

Certain Acts relating to Exportation repealed.

3 H. 7. c. 12. (vulgo c. 11.) Cloths unshorn.

11 H. 7. c. 13. Horses.

3 H. 8. c. 3. § 4. Aliens exporting Bows.

3 H. 8. c. 7. Cloths unshorn.

No. I.
3 Geo. IV.
c. 41.
(Irish Acts.)

An Act against carrying Cloths over Sea unshorn;---and also, two Acts made in the Parliament of *Ireland* in the thirteenth and twenty-eighth years of the reign of King *Henry* the Eighth, to prevent the lading or exporting of wools and flocks;---and also, an Act made in the Parliament holden in the fourteenth and fifteenth years of the reign of the said King *Henry* the Eighth, intituled *The Act concerning the conveying transporting and carrying of Broad White Woollen Cloths out of this realm*;---

13 H. 8. c. 2. & 28 H. 8. c. 17.

and also, So much of an Act made in the Parliament holden in the said fourteenth and fifteenth years of the reign of the said King *Henry* the Eighth, intituled *The Act concerning the Dressing of Worsteads Sayes and Stamins for the Town of* Great Yarmouth, whereby it is enacted, "That no person or persons convey or transport into any of the parts beyond the sea any manner of cloths of worsteds before the same cloths be shorn dyed coloured and calendred, upon pain of forfeiting the value thereof;"---and also, the whole of an Act made in the twenty-first year of the reign of the said King *Henry* the Eighth, intituled *An Act against the carrying of Laten Brass and such Metal mixed beyond the Sea*;---and also, an Act made in the twenty-second year of the reign of the said King *Henry* the Eighth, intituled *An Act against Conveyance of Horses out of this Realm*;---and also, So much of an Act made in the twenty-fifth year of the reign of the said King *Henry* the Eighth, intituled *An Act of Proclamation to be made concerning Victuals*, whereby it is enacted, "That no person or persons unless it be by licence under the King's great seal shall carry or convey or cause to be carried or conveyed, any beef mutton veal pork or any other victuals in the said Act mentioned to any ports beyond the seas, except as in the said Act is excepted;"---and also, So much of an Act made in the twenty-sixth year of the reign of the said King *Henry* the Eighth, intituled *An Act for making of Worsteds in the City of* Norwich, *and in the Towns of* Lyn *and* Yarmouth, whereby so much as is hereinbefore recited of the Act made in the fourteenth and fifteenth years of the said King *Henry* the Eighth, concerning the dressing of worsted sayes and stamins for the town of *Great Yarmouth* is made perpetual;---and also, another Act made in the twenty-seventh year of the reign of King *Henry* the Eighth, intituled *An Act concerning the Custom of Leather*;---and also an Act made in the thirty-third year of the reign of the said King *Henry* the Eighth, intituled *An Act concerning the Conveyance of Brass Latten and Bell Metal over the Sea*;---and also, So much of another Act made in the said thirty-third year of the reign of the said King *Henry* the Eighth, intituled *An Act for Maintenance of Artillery and debarring of unlawful Games*, whereby it is enacted "That no stranger born out of the King's obeysance not being denizen shall convey or do to be conveyed give sell or exchange into any parts out of the King's obeysance any long bows arrows or shafts without the King's especial licence, upon pain of forfeiture of the same and of imprisonment;"---and also, So much of an Act made in the said thirty-third year of the reign of the said King *Henry* the Eighth, intituled *An Act for Worsted Yarn in* Norfolk, whereby any penalty or forfeiture is imposed on any person or persons who ship to carry or convey into the parts beyond the sea any yarn called worsted yarn not wrought or made in cloth, so such yarn be spun or made within the realm of *England*;---and also, an Act made in the first year of the reign of King *Edward* the Sixth, intituled *An Act that no Horses shall be conveyed out of this Realm and other the King's Dominions without Licence*, or so much thereof as shall be in force immediately before the passing of this Act;---and also, So much of an Act made in the said first year of the reign of the said King *Edward* the Sixth, intituled *An Act for the Continuance of making of Worsted Yarn in* Norfolk, whereby so much of the Act made in the thirty-third year of the reign of King *Henry* the Eighth, intituled *An Act for Worsted Yarn* in Norfolk, as is hereinbefore recited and set forth, is enacted to continue for ever;---and also, The whole of an Act made in the Parliament holden in the second and third years of the reign of King *Edward* the Sixth, intituled *An Act for carrying of Bell Metal out of the Realm*, or *An Act against the carrying of Bell Metal out of the Realm*;---

14 & 15 H. 8. c. 1. Cloths.

14 & 15 H. 8. c. 3. § ult. Worsted Cloths.

21 H. 8. c. 10. Metal.

22 H. 8. c. 7. Horses.

25 H. 8. c. 2. §. ult. Victuals not to be exported unless by Licence.

26 H. 8. c. 16. Cloths. Making perpetual 14, 15 H. 8. c. 3.

27 H. 8. c. 14. Leather.

33 H. 8. c. 9. Metal.

33 H. 8. c. 9. § 7. Bows not to be exported by Aliens.

33 H. 8. c. 16. § 2. Yarn.

1 E. 6. c. 5. Horses.

1 E. 6. c. 6. § 2. making perpetual 33 H. 8. c. 16. § 2.

2 & 3 E. 6. c. 37. Metal.

No. I.
3 Geo. IV.
c. 41.

and also, So much of an Act made in the Parliament holden in the fifth and sixth years of the reign of the said King *Edward* the Sixth, intituled *An Act against Regrators of tanned Leather*, whereby it is enacted, "That no person or persons shall ship or cause to be shipped (to the intent to carry transport or convey over the sea, as merchandize to be sold or exchanged there,) any shoes boots buskins stertups or slippers, upon pain to forfeit the same or the value thereof;"---and also, So much of an Act made in the Parliament begun to be holden at *Westminster* on the second day of *April* in the first year of the reign of Queen *Mary*, intituled *An Act touching the buying and carrying of Leather*, whereby it is enacted or provided, "That curriers shoemakers and girdlers nor any person for them or for their use, shall buy any kind of tanned leather to sell again to any merchant or other stranger to be conveyed over the sea, nor shall send nor convey any leather beyond the sea, upon the forfeiture of all such leather so brought;"---and also, an Act made in the Parliament holden in the first and second years of the reign of King *Philip* and Queen *Mary*, intituled *An Act to restrain carrying of Corn Victuals and Wood over the Sea*, so far as the same relates to victuals and wood;--- and also, an Act made in the fifth year of the reign of Queen *Elizabeth*, intituled *An Act against carrying of Sheep Skins and Pelts over the Sea not being Staple Ware*, or so much of the said Act as shall be in force immediately before the passing of this Act;---and also, an Act made in the eighth year of the reign of the said Queen *Elizabeth*, intituled *An Act against carrying over Sea Rams Lambs and other Sheep alive*;---and also, another Act made in the said eighth year of the reign of Queen *Elizabeth*, intituled *An Act touching Cloth Workers and Cloths ready wrought to be shipped over the Sea*;---and also, an Act made in the Parliament of *Ireland* in the eleventh year of the reign of Queen *Elizabeth*, intituled *An Act for the staying of Wool Flocks and Tallow and other Necessaries within this Realm*;---and also, an Act made in the said Parliament in the thirteenth year of Queen *Elizabeth*, for explaining the said Acts of the eleventh year of Queen *Elizabeth*;---and also, an Act made in the eighteenth year of the reign of the said Queen *Elizabeth*, intituled *An Act against the transporting of Leather Tallow and Raw Hides out of the Realm*; —and also, an Act made in the thirty-fifth year of the reign of the said Queen *Elizabeth*, intituled *An Act for the bringing in Clap Board from the Parts of beyond the Seas, and the restraining of transporting of Wine Casks for the sparing and preserving of Timber within this Realm*;---and also, So much of an Act made in the third year of the reign of King *James* the First, intituled *An Act for the Relief of such as lawfully use the Trade and Handicraft of Skinners*, whereby it is enacted "That no person or persons shall transport or carry beyond the seas nor cause to be transported or carried beyond the seas nor shall pack ship or lade to the intent to transport or carry beyond the seas any black coney skins of the breed of this realm, unless the same skins shall first be tanned and duly and perfectly wrought dressed and packed within this realm, by those that are artizans skinners or tanners unto the said artizans skinners, according to the science art and faculty of the said artizans skinners, upon pain of forfeiture of such skins or the value thereof;"---and also, the whole of another Act made in the said third year of the reign of the said King *James* the First, intituled *An Act for the Transportation of Beer over the Sea*:---And the said several Acts before mentioned or so much and such parts of the said several Acts respectively as are hereinbefore respectively recited and set forth are hereby accordingly repealed, and from and after the passing of this Act shall cease and determine and be of no force effect or validity whatsoever; any thing in the said recited Acts or any of them, or in any other Act or Acts for continuing or amending of the said Acts or any of them or any part thereof, or any law usage or custom whatsoever to the contrary in anywise notwithstanding: Except only so far as the said Acts or any of them or any thing therein contained repeal any former Act or Acts or any part thereof, and which said Act or Acts or the part thereof so repealed, shall remain and continue so repealed to all intents and purposes whatsoever.

5, 6 E. 6. c. 15. § 5. Exporting Shoes, &c.

1 M. st. 3. c. 8. § 1. Leather.

1, 2 P. & M. c. 5. Provisions, Wood, &c.

5 El. c. 22. Sheep Skins.

8 El. c. 3. Live Sheep.

8 El. c. 6. Cloths.

(Irish Acts.) 11 El. c. 10. 13 El. c. 2. Preventing Export of Wool.

18 El. c. 9. Leather.

35 El. c. 11. Clap Board to be imported for Beer exported.

3 Ja. 1. c. 9. § 1. Coney Skins.

3 Ja. 1. c. 11. Beer.

Recited Acts repealed accordingly.

Except as they repeal former Acts.

No. I.
3 Geo. IV. c. 41.

Laws relating to the Staples become inoperative;

V. And whereas divers laws statutes ordinances and provisions have been from time to time made relating to the staples or markets of wools leather woolfells lead tin and other commodities of the realm, and to the places (within the realm and without) where such staples should be held and to which such staple commodities of the realm should be brought or carried for sale and exportation, and relating to the sale and purchase and export of such staple commodities and to the conduct of merchants strangers and others at such staples: And whereas such staples or markets have long ceased to be held, and the laws relating to the same have become inoperative and inapplicable to the trade in the said commodities, and it is therefore expedient that the said laws should be expressly repealed: Be it therefore enacted, That from and after the passing of this Act the several statutes and ordinances hereinafter mentioned, and so much and such parts of such statutes and ordinances respectively as are hereinafter specified and set forth relating to the said staples shall be repealed; that is to say, The whole of a statute or ordinance made in the twenty-seventh year of the reign of King *Edward* the Third, intituled or known by the name of *The Statute of the Staple*, or *The Ordinance of the Staples*, or by whatever name title or description the said statute or ordinance may have been or may be known intituled or described; except only so far as is hereinafter specially excepted and provided for;---and also, an Ordinance made in the said twenty-seventh year (or in the twenty-eighth year) of the reign of the said King *Edward* the Third, concerning the sums to be paid to the mayors and constables of the staples for their services; or so much of the said several statutes or ordinances as shall be in force and unrepealed immediately before the passing of this Act;---and also, So much of a statute made in the twenty-eighth year of the reign of the said King *Edward* the Third, whereby it is accorded and established, "That all the ordinances made in the great council holden at *Westminster* the *Monday* next after the Feast of *Saint Matthew* the Apostle, then last past, together with certain declarations and additions made in the Parliament of the said twenty-eighth year, should be firmly kept and holden for a statute to endure for ever;"---and also, So much and such parts of the said statute made in the twenty-eighth year of the reign of the said King *Edward* the Third, whereby it is accorded and established, "That the warranty of packing of wools shall wholly be out, and that no man be holden to make such warranty unless it is by a covenant made by deed ensealed; and that no man other than a merchant denizen or alien shall be charged by the laws and usages of the staple until they be declared in Parliament;"---and also, So much of the said last mentioned statute as relates to the showing of wools at the staple or within three miles about the staple; or to the bounds of the staple of *Westminster* or in other cities or towns;---and also, So much of a statute made in the thirty-first year of the reign of the said King *Edward* the Third, whereby it is accorded and established, "That the King assign his justices to enquire hear and determine of those that have carried wools leather and woolfells to the parts beyond the seas, and thereof have made covin and excess and otherwise attempted against the ordinances and the form of the statute of the staple;"---and also, So much of the said last-mentioned statute as relates to the exportation of wools leather and woolfells and to the refuse of wools, and to the bringing wools fells and leather to the staple or to the ports ordained for the staple or to the lodging showing or selling of wools within three miles of the staple, or to the prolonging the term for exportation of wools;---and also, So much of a statute made in the thirty-sixth year of the reign of the said King *Edward* the Third as relates to the cognizance of debts covenants and contracts and other pleas touching merchandize before mayors and constables of the staples, and to the suing by merchants aliens of their plaints and quarrels before the mayor of the staple, and to the power of the mayor of the staple to take recognizances of debt;---and also, So much of a statute made in the thirty-eighth year of the reign of the said King *Edward* the Third, whereby it is accorded and assented, "That the staple shall be in *England*, and

Certain Statutes and Ordinances, or Parts thereof, repealed, viz.

Statute or Ordinance of the Staples. 27 E. 3. st. 2.

27 (or 28) E. 3. Ordinance for Fees of the Staple.

28 E. 3. c. 13. Confirming the Ordinances.

Packing of Wools, c. 13.

Usage of Staples. 28 E. 3. c. 14.

Showing of Wools. 28 E. 3. c. 15.

Bounds of the Staples.

31 E. 3. c. 7. Punishing Exportation of Wool, &c. contrary to the Staple Laws.

cc. 8. 9. Exportation of Wools, &c.

36 E. 3. st. 1. c. 7. Power of Mayors, &c. of the Staples.

38 E. 3. st. 1. c. 7. confirming 27 E. 3. st. 2.

that the statute of the staple made in the seven-and-twentieth year of the reign of the said King *Edward* the Third, with the declarations additions and modifications thereof made, be holden and kept, notwithstanding any grant licence or other statute or ordinance made afterward;"---and also, So much of a statute made in the forty-third year of the reign of the said King *Edward* the Third, as relates to abolishing the staple at *Calais*, and as directs that the staple of wools woolfells and leather shall be holden in certain places in *England Wales* and *Ireland;* and as relates to the weighing sealing cocketing and customing of wools woolfells and leather at the said staples before the said wools woolfells or leather shall pass out of the realm, and as relates to the carrying wools woolfells and leather out of the realm by aliens and not by denizens, and as imposes or inflicts any forfeiture or penalty on such exportation by denizens;---and also, So much of a statute made in the Parliament holden at *Gloucester* in the second year of the reign of King *Richard* the Second, whereby any saving is made for the ordinances made before that time of the staple of *Calais*, to be holden in their force and virtue;---and also, So much of the said last-mentioned statute as relates to merchants of *Genoa Venice Catalonia Arragon*, and of other lands realms and countries towards the west, carrying wools leather woolfells lead tin and other merchandizes of the staple into their country towards the west, paying the customs subsidies and duties, and finding the surety in the said Act mentioned;---and also, So much of a statute made in the twelfth year of the reign of King *Richard* the Second, whereby it is ordained and assented, "That the staple be removed from *Middleburgh* to *Calais*;"---and also, So much of a statute made in the fourteenth year of the reign of King *Richard* the Second, whereby it is ordained and established, "That the staple be removed from *Calais* into *England*, and that it be holden in the places contained in the statute of the staple, made in the seven-and-twentieth year of the said King's grandfather, and in none other places; and that the said statute be holden and kept and duly executed in all points, with the additions in the said statute of the fourteenth year of King *Richard* the Second, notwithstanding any declaration or statute made to the contrary;"---and also, So much of the said statute of the fourteenth year of the reign of King *Richard* the Second, whereby it is ordained and established, "That in every port and place where the staple shall be, the mayors constables brokers and all other officers and ministers of the staple shall be sworn first to the King and afterwards to the staple;"---and also, So much of the said last-mentioned statute, whereby it is ordained and established, "That no denizen carry wools leather woolfells nor lead out of the realm of *England* to the parts beyond the sea, upon pain of forfeiture of the same, but only strangers;"---and also, So much of the said last-mentioned statute as relates to recognizances of debts made before or taken or received by any mayor of the staple, and to any penalty in respect of such recognizance taken contrary to the statute of the staple;---and also, So much of a statute made in the twenty-first year of the reign of the said King *Richard* the Second as relates to the exportation of wools leather woolfells tin and lead to any other place than to the staple at *Calais*;---and also, So much of a statute made in the second year of the reign of King *Henry* the Fifth, in a Parliament holden at *Westminster* the *Monday* next after the octaves of *Saint Martin*, whereby an ordinance made in the first year of the reign of King *Henry* the Fourth, relating to the staple of wools leather woolfells lead and tin at *Calais* was confirmed; and whereby it was ordained, "That no wools fells leather lead or tin nor none other merchandize of the staple should be sent or carried to any parts beyond the sea, unless they were first brought to the said staple at *Calais* after the form of the said ordinance, upon the penalties and under the regulations in the said last recited statute mentioned and provided;---and also, So much of a statute made in the second year of the reign of King *Henry* the Sixth, whereby it was ordained and established, "That any statutes or ordinances relating to the staple at *Calais* before then made and not repealed, should be holden and kept and

43 E. 3. c. 1. Staples for Wool, and exporting of Wool by Aliens.

2 R. 2. st. 1. c. 1. Saving for Ordinances of Staple at Calais.

2 R. 2. st. 1. c. 3. Merchants of Genoa, &c. exporting Staple Goods.

12 R. 2. c. 16. Staple at Calais.

14 R. 2. c. 1. Staple Towns in England.

14 R. 2. c. 3. Officers of the Staple.

14 R. 2. c. 5. Exporting Staple Goods by Aliens.

15 R. 2. c. 9. Recognizances.

21 R. 2. c. 17. Exporting Staple Goods.

2 H. 5. st. 2. c. 6. Staple at Calais.

2 H. 6. c. 4. Staple at Calais.

No. I.
3 Geo. IV. c. 41.

put in due execution; and that the whole repair of wools woolfells leather lead tin whole or molten called shotten tin, and all other merchandizes pertaining to the staple passing out of the realm of *England* and of the countries of *Wales* and *Ireland*, should be at the said place of *Calais* and at none other place beyond the sea, as long as the said staple should be at the town of *Calais*, upon pain of forfeiture of the very value of the merchandizes which should pass elsewhere but to the parts towards the west named in the said statutes thereof made;"—and also, So much of the said last-mentioned statute as relates to licences for the shipping of wools fells and leather of *Northumberland Westmorland Cumberland* and the bishoprick of *Durham*;—and also, So much of the said last-mentioned statute, whereby it is ordained and established, "That if any person carry or cause to be carried any wools or woolfells not customed out of the realm to other places than to the staple of *Calais*, he shall forfeit to the King the value of the merchandizes so shipped and his body to prison till he hath made and paid a fine and ransom; and that he that giveth knowledge to the treasurer of *England* for the time being, and the trespasser for the same duly convict, shall have the fourth part of the forfeiture due to the King in this behalf;"—and also, So much of the statute made in the third year of the reign of the said King *Henry* the Sixth, whereby it is ordained and established, "That he that will carry butter and cheese to any other parts than to the staple at *Calais*, shall sue to the Chancellor of *England* for the time being to have a licence in this behalf; and that the same Chancellor have power to make to him such licences under the King's great seal, if it like him so to do by his discretion;"—and also, So much of a statute made in the sixth year of the reign of the said King *Henry* the Sixth, whereby it is ordained, "That every merchant as well denizen as alien, may freely and safely ship wools leather woolfells and other merchandizes of the staple in the port of *Melcombe* in the county of *Dorset*, and from thence carry them to the staple of *Calais*, paying the customs and subsidies due to the King;"—and also, So much of a statute made in the eighth year of the reign of the said King *Henry* the Sixth, whereby it is ordained, "That no person ship nor do to be shipped no manner of wools woolfells leather lead nor tin, whole nor shotten, nor the same carry nor convey to none other parts beyond the sea but only to the staple of *Calais*;" and whereby any forfeiture or penalty is imposed or inflicted or made payable in respect of merchandizes carried or conveyed contrary to the ordaining of the said statute;—and also, So much of the said last-mentioned statute as relates to the sale of wools woolfells and tin at the staple of *Calais* and the payment for the same and the bringing bullion to the mint there, and the partition of the money for wools and woolfells sold there and the acquittances to merchants buyers;—and also, So much of the said last-mentioned statute, whereby it is ordained, "That no merchant continually inhabiting within the town of *Calais*, shall be suffered to buy beyond the sea any manner of wools woolfells leather lead nor tin nor other merchandize pertaining to the staple, upon pain of forfeiture of the same;—and also, So much of the said last-mentioned statute, whereby it is ordained, "That certain licences to the men of *Newcastle* and *Berwick* for the exporting of wools shall be repealed; and that, if any of evil will do sell or carry any wools or woolfells leather lead or any other merchandizes of the staple, in defraud of the King or hinderance of the commodity of his realm into *Scotland*, that he shall forfeit the same goods with the double value, and his body to prison by the space of a year;"—and also, So much of a statute made in the tenth year of the reign of the said King *Henry* the Sixth, whereby it is ordained, "That all the recognizances of debts before the mayor and constables of the staple of *Calais* made or to be made by any persons beyond the sea, shall be as effectual and executory and of such force in all points within the realm, and in the same form executory as the recognizances made before the mayor and constables of the staple of *Westminster*, or before any other mayors or constables within

3 H. 6. c. 4. Exporting Wools not customed.

3 H. 6. c. 4. Exporting Butter and Cheese.

6 H. 6. c. 6. Exporting Staple Goods from Melcombe.

8 H. 6. c. 17. Exporting Staple Goods except to Calais.

8 H. 6. c. 18. Sale of Staple Goods at Calais.

8 H. 6. c. 20. Purchase of Staple Goods by Merchants of Calais.

c. 21. Export of Wool, &c. from Newcastle and Berwick, to Scotland.

10 H. 6. c. 1. Recognizances of the Staple at Calais.

the said realm be;"—and also, So much of the said last-mentioned statute, whereby any penalty or forfeiture is imposed or made payable or any search is authorised in respect of any wool woolfells hides lead tin or other merchandizes of the staple, carried into *Scotland Flanders Holland Zealand* or *Brabant*;—and also, So much of a statute made in the eleventh year of the reign of King *Henry* the Sixth, whereby it is ordained, "That the ordinance and statute made in the eighth year of the said King *Henry* the Sixth, and hereinbefore recited, relating to the sale of wools woolfells and tin at the staple of *Calais* and the payment for the same, and the bringing bullion to the mint there, and the partition of the money for wools and woolfells sold there should be continued; saving to the King power and authority to modify the same statute by the advice of his council;"—and also, So much of the said statute of the eleventh year of the reign of King *Henry* the Sixth, whereby it is ordained and established, "That none upon pain of felony bring carry or ship nor cause to be brought carried nor shipped any merchandizes of the staple in any creeks within the realm of *England*;"—and also, So much of a statute made in the fourteenth year of the reign of the said King *Henry* the Sixth, whereby it is ordained, "That no licences mentioned in the said statute, as prejudicial and contrary to the common and universal weal of the realm and of the merchants and in destruction of the town of *Calais*, and of the ordinance of partition made in the eighth year of the reign of the said King, shall in nowise be granted; and that every man which shippeth or doeth to be shipped any wools or woolfells to carry them over the sea in anywise shall repair with the same to *Calais*, and there discharge the said wools and woolfells after the tenor of the statutes and after the good rules and ordinances of the staple, saving as in the said statute is saved and provided;"---and also, So much of the said statute of the fourteenth year of the reign of the said King *Henry* the Sixth, whereby is ordained, "That all the wools and woolfells and all other merchandizes which by statute ought to repair to the staple of *Calais*, found in any creek shipped contrary to the statute and ordinance made in the eleventh year of the reign of the said King *Henry* the Sixth, and hereinbefore recited and repealed shall be forfeit: and that every person that shall ship or cause to be shipped any manner of wools woolfells or other merchandize to go to the staple aforesaid, and come not there shall forfeit as much goods as the wools woolfells and other merchandizes by them so shipped and carried to other places than to *Calais* do amount, by extent after the very value except the merchandizes which be to be excepted to pass by the King's licence to other places: and that if any person lay any wools woolfells or other merchandize of the staple in any suspicious place adjoining to the water side, and no indenture thereof made betwixt him and the mayor bailiffs or constables of the town in which such wools woolfells and other merchandize of the staple be so laid, that the said wools woolfells and merchandize be forfeit; and that every man shall have power to make search in every place for such goods of the staple so carried or shipped or laid to be shipped as aforesaid without impediment or disturbance of any person;"---and also, So much of a statute made in the fifteenth year of the reign of the said King *Henry* the Sixth, whereby it is ordained, "That no person shall ship nor do to be shipped wools woolfells and other merchandizes pertaining to the staple, in no place within the realm but only at the keys and wharfs being in the ports assigned by statute, where the King's weights and his beam be set; and that every master of the ships and vessels in which such wools and woolfells and merchandizes be put shall find security to the customer of the ports where they do ship to carry the said wools and woolfells and merchandize to the staple of *Calais*, and to bring a certification from thence that he hath so done;"---and also, So much of a statute made in the eighteenth year of the reign of the said King *Henry* the Sixth, whereby it is ordained, "That no manner of person shall carry or do to be carried any wools or woolfells customable out of the realm to other places than to the staple of *Calais* without the King's special licence upon pain of felony; and that if any person do contrary thereto and

10 H. 6. c. 7. Exporting Staple Goods to Scotland, Holland, &c.

11 H. 6. c. 13. continuing 8 H. 6. c. 18.

11 H. 6. c. 14. Shipping Staple Goods in Creeks.

14 H. 6. c. 2. Exporting Staple Goods to Calais.

14 H. 6. c. 5. Shipping Staple Goods in Creeks, &c.

15 H. 6. c. 8. Shipping Staple Goods at the lawful Keys, &c.

18 H. 6. c. 15, Exporting Wools, except to Calais, Felony.

No. I.
3 Geo. IV. c. 41.

thereof be convicted or attainted, that he be adjudged for a felon;" and also, So much of the said statute as relates to the enquiring hearing and determining of such offences;---and also, So much of a statute made in the twentieth year of the reign of the said King *Henry* the Sixth, as relates to a certain ordinance of partition made upon wools and woolfells

20 H. 6. c. 12. Partition of Price of Wools sold at Calais.

in the staple at *Calais*;---and also, So much of a statute made in the twenty-seventh year of the reign of the said King *Henry* the Sixth, whereby it is ordained and established, "That the mayors constables and fellowship of merchants of the staple of *Calais* for the time being, and

27 H. 6. c. 2. Confirming the Privileges of the Mayor, &c. of the Staple at Calais.

their successors for ever, may have and enjoy all their franchises and liberties, and every of them, and whole repair of all manner of merchandizes to the said staple by the said King or his progenitors to them or to their predecessors or any of them, by the authority of Parliament granted or confirmed not repealed nor excepted;" and also, So much and all such parts of the said last-mentioned statute as in any way relate to the said mayor constables and fellowship and their successors, or to any powers authorities or privileges to be used or exercised by them or to any action or suit to be brought by them under the said statute; and also, So much and such parts of the said statute as relate to any licence for shipping wools woolfells or tin out of the realm of *England Ireland* or *Wales*, to any other place than to the staple of *Calais*; or to the shipping or carrying any wools woolfells or tin out of the realm by colour of any licence and putting them to sale in any other port or place out of the realm than at the said staple of *Calais*; or to any penalties or forfeitures of money goods or chattels imposed or inflicted in respect of any such offences by the said statute; or to any powers of seizing any wools woolfells or tin carried or shipped contrary to the said statute; or to any penalties on any customer comptroller searcher or surveyor admitting any such wools woolfells or tin to be shipped to any other port or place than to the said staple, or willingly suffering any such merchandizes to pass out of the realm not customed or not weighed at the King's beam; or to the mode of recovering such penalties; or to the trial of any thing done contrary to the ordinance of the said statute either within the realm or without;---and also, So much and such parts of a statute made in the

3 E. 4. c. 1. Buying and exporting Wool.

third year of the reign of King *Edward* the Fourth, as relates to the buying or shipping of wools or woolfells morling or shorling by aliens or strangers within the realm or the carrying the same by them out of the realm; or to the carrying any wools woolfells morling or shorling out of the realm by any person stranger alien or denizen, or to the shipping or carrying such wools woolfells shorling or morling to any place out of the said realm except to *Calais*; or to the shipping any wools woolfells shorling or morling of the growing within any of the counties of *Northumberland Cumberland* and *Westmorland* or within the bishoprick of *Durham*; or to any pain penalty or forfeiture whatever in respect of any offences against the said provisions of the said statute;---and also, So much of the said

Selling Staple Goods at Calais for ready Money.

last-mentioned statute whereby it is ordained and established, "That no merchant of the said staple of *Calais* shall sell or utter any wools woolfells morling or shorling or any other merchandizes of the staple at the said staple, but that he before or upon delivery of the same receive and take ready payment and contentation for the same in manner directed by the said statute upon the penalty or forfeiture in the said statute mentioned; and that no merchant of the said staple shall sell or utter or alter the property from him of the said merchandizes of the staple nor no part of the same at any place out of the realm other than at the said staple of *Calais*;"-- and also, So much and such parts of a statute made in

4 E. 4. c. 2. Shipping Wools for Exportation to the Staple at Calais, &c.

the fourth year of the reign of the said King *Edward* the Fourth, whereby it is granted ordained and established, "That all wools and woolfells shorling and morling that shall be shipped to pass out of the realm shall be shipped at the towns of such ports wherein the King hath his beam his weights and collectors of the customs to serve and deliver the merchandize as specified and set forth in the said statute; and that every person that so shall ship or cause to be shipped out of this realm any wools woolfells shorling or morling upon the shipping of them and before

that they pass out of any of the said towns where they shall be shipped shall find surety to the King and the collector of his customs thero that the same wools woolfells shorling and morling shall pass to *Calais* and to none other place without fraud or collusion;"---and also, So much of the said last-mentioned statute as relates to any certificate of the customer testifying the coming of all such ships with wools woolfells shorling and morling to *Calais* or as imposes any penalty on such customer not giving such certificate, or on any person not bringing in such certificate, or on any person doing contrary to the said statute, or as relates to the application or recovery of any such penalty;---and also, So much of the said last-mentioned statute as relates to the shipping of any wool or woolfells morling or shorling shipped at the port and town of *Newcastle*, or as imposes any penalty or forfeiture in respect of any such wools woolfells morling or shorling at the said town or port, or as relates to the application or recovery of any such penalty or forfeiture;---and also, So much of a statute made in the twelfth year of the reign of the said King *Edward* the Fourth, whereby it is enacted ordained and established, " That all the wools woolfells and fells called shorling and morling growing within the realm (other than in the said statute are excepted) to be shipped and conveyed out of the realm shall be conveyed to the staple of *Calais* and to none other place, and that if any man do the contrary and thereupon be duly convict that then he shall stand and be of like condition as a man attainted of felony after the course of the common law, and shall incur like pain and forfeiture as he so attainted for the same should do;"---and also, So much of the said last-mentioned statute whereby it is ordained, " That all wools and woolfells and fells called morling and shorling growing or being in any county of the realm or in *Wales* or in the markets of the same other than before excepted to be carried out of the realm shall be conveyed to the said staple of *Calais* and to none other place upon the same penalty and forfeiture; the prerogative of the King to grant any licence to the contrary except;"---and also, So much of a statute made in the fourteenth year of the reign of the said King *Edward* the Fourth, whereby it is ordained and established, " That the Act of the twelfth year of the reign of the said King *Edward* the Fourth, immmediately hereinbefore recited, should be in full strength and effect in every point thereof, saving only as in the said statute of the said fourteenth year is saved and excepted;"---and also, So much of the said statute of the said fourteenth year as relates to wools woolfells and fells called shorling and morling growing and being within the counties of *Westmorland Cumberland Northumberland* the bishoprick of *Durham Richmondshire* and *Allerton*, to be carried out of the realm: And the said several statutes and ordinances hereinbefore recited and so much and such parts of the several other statutes as are hereinbefore recited and set forth are hereby accordingly repealed and from and after the passing of this Act shall cease determine and be of no force effect or validity whatsoever, except as in this Act is excepted or provided for; any thing in the said recited statutes and ordinances or any of them or in any statute or Act for continuing or amending of the said statutes or ordinances or any of them or any part thereof, or any law usage or custom whatsoever to the contrary in anywise notwithstanding; except so far as the said statutes or ordinances or any of them or any thing therein contained repeal any former statute or statutes or Act or Acts or any part thereof; and all and every of which said statutes or statute or the parts thereof so repealed shall remain and continue repealed to all intents and purposes whatsoever.

4 E. 4. c. 3. Shipping Wools at Newcastle.

12 E. 4. c. 5. Exporting Wools to Calais, &c.

14 E. 4. c. 3. Confirming and amending 12 E. 4. c. 5.

The said Statutes, Ordinances, and Parts of Statutes repealed accordingly;

except as herein provided for, and so far as they repeal former Statutes, which shall remain repealed.

VI. And be it further enacted, That from and after the passing of this Act the several Acts hereafter mentioned or so much and such parts of the said Acts respectively as are hereinafter recited shall be repealed; that is to say,—an Act made in the first year of the reign of King *Henry* the Seventh, intituled *An Act that no Protection shall be allowed before the Mayor of the Staple at* Calais;---and also, So much of an Act made in

Certain Acts and Parts of Acts relating to the Staple to be repealed.

1 H. 7. c. 3. Suits before Mayor of the Staple.

No. I. 3 Geo. IV. c. 41.

the thirty-seventh year of King *Henry* the Eighth, intituled *An Act against regrating of Wools*, as relates to the buying of any wool by merchants of the staple at *Calais* and their servants and factors for the only provision of the said staple and to be shipped only to the said staple;---and also, So much of an Act made in the Parliament holden in the fifth and sixth years of the reign of King *Edward* the Sixth, intituled *An Act limiting the Time of buying and selling of Wools*, as relates to the buying of wool by any merchant of the staple at *Calais* or his or their apprentice or apprentices to be shipped to the staple at *Calais* and to the sale by the said merchants of the staple of any refuse coarse wools and locks such as is not mete for the staple;---and also, So much of an Act made in the fifth year of the reign of Queen *Elizabeth*, intituled *An Act against the carrying of Sheep Skins and Pelts over the Sea not being Staple Ware;* whereby it is provided, "That it shall and may be lawful to the merchants of the staple their servants factors and attornies and every of them to carry and transport all such lawful wares as theretofore they had been accustomed and lawfully might;---and also, an Act made in the Parliament of *Ireland* in the thirteenth year of the reign of Queen *Elizabeth*, intituled *An Act that such Cloth and Stuff as shall be wrought of the Wool Flocks, Linen Yarn, Woollen Yarn, Sheep Fell, Calf Fell, Goat Fell, Red Deer Fell, or Fallow Deer Fell, within this realm, shall be transported for Merchandize only by the Merchants within every the Staple Cities and Towns of this Realm, and by the free Merchants of the Boroughs and privileged Towns, and by none others;*"---and the said several Acts before mentioned or so much and such parts of the said several Acts respectively as are hereinbefore respectively recited and set forth are hereby accordingly repealed; and from and after the passing of this Act shall cease and determine and be of no force effect or validity whatsoever; any thing in the said recited Acts or any of them or in any Act or Acts for containing or amending of the said Acts or any of them or any part thereof, or any law usage or custom whatsoever to the contrary in anywise notwithstanding; except only so far as the said Acts or any of them or any thing therein contained repeal any former statute or statutes or Act or Acts or any part thereof; and which said statute or statutes or Act or Acts or the part thereof so repealed shall remain and continue repealed to all intents and purposes whatsoever.

37 H. 8. c. 15. Regrating Wools.

5, 6 E. 6. c. 7. Buying Wool.

5 El. c. 22. §. 3. Exporting Staple-Wares.

(Irish Act) 13 El. c. 1. Export by Staple Merchants.

Recited Acts repealed accordingly;

except as they repeal former Acts.

VII. Provided always and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter the several statutes or Acts or parts of statutes or Acts or any of them hereinafter mentioned; that is to say, a statute made in the thirteenth year of the reign of King *Edward* the First, usually called the statutes of merchants; So much of the hereinbefore mentioned statute of the staple or ordinance of the staples made in the twenty-seventh year of the reign of King *Edward* the Third, as relates to recognizances acknowledged in the staples for recovery of debts;---So much of a statute made in the fifteenth year of King *Richard* the Second, whereby so much of the said last-mentioned statute of the twenty-seventh year of King *Edward* the Third as relates to the said recognizances is confirmed or amended;---So much of a statute made in the fifth year of the reign of King *Henry* the Fourth, as relates to the regulating of executions upon statutes merchants;---So much of a statute made in the eleventh year of the reign of King *Henry* the Sixth, as relates to the regulating proceedings on writs of *scire facias* to defeat executions on statutes staple;---the whole of an Act 'For obligations to be taken by the two chief justices the mayor of the staple and the recorder of *London*,' made in the twenty-third year of the reign of King *Henry* the Eighth, and intituled *An Act concerning before whom Recognizances of Debt shall be made, and the Form of the Obligation*;---So much of an Act made in the twenty-seventh year of the reign of Queen *Elizabeth*, intituled *An Act against covenous and fraudulent Conveyances*, as in any way relates to or concerns recognizances by statutes merchant or statutes of the staple;---an Act made in the eighth year of the reign of King *George* the First, intituled *An Act for supplying some Defects in the Statute of the Twenty-third of King* Henry *the Eighth, intituled* 'An

Proviso for Statutes 13 E. 1. (Statute of Merchants.) 27 E. 3. st. 2. c. 9. (Statute Staple.) 15 R. 2. c. 9. 5 H. 4. c. 12. 11 H. 6. c. 10. 23 H. 8. c. 6. 27 El. c. 4. §7. &c. 8 G. 1. c. 25. as to Proceedings on Recognizances by Statutes Staple.

Act for Obligations to be taken by the Two Chief Justices, the Mayor of the Staple, and the Recorder of London,' *and for setting down the Time of signing Judgments in the Principality of* Wales *and Counties Palatine;*

but the said several statutes and Acts and the several provisions therein contained so far as the same relate to such obligations and recognizances shall be and remain and the same are hereby declared to be and remain in such force and effect as the said statutes or Acts and the said provisions contained therein or in any of them were immediately before the passing of this Act,

Proviso that so much of statute 28 E. 3. c. 13. 8 H. 6. c. 29. (explaining 2 H. 5. st. 2. c. 3.) as relate to Juries where Aliens are Parties, shall remain in force.

VIII. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal so much or such part of the said recited statute made in the twenty-eighth year of the reign of King *Edward* the Third, confirming the ordinance of the staple whereby it is accorded and established, 'That in all manner of inquests and proofs which be to be taken or made among aliens and denizens be they merchants or other as well before the mayor of the staple as before any other justices or ministers although the King be party, the one half of the inquest or proof shall be of denizens and the other half of aliens if so many aliens be in the town or place where such inquest or proof is to be taken that be not parties nor with the parties in contracts pleas or other quarrels whereof such inquests or proofs ought to be taken; and that if there be not so many aliens then shall there be put in such inquests or proofs as many aliens as shall be found in the same towns or places which be not thereto parties nor with the parties as afore is said; and the remnant of denizens which be good men and not suspicious to the one party nor to the other:'—nor to extend nor be construed to extend to repeal or alter so much of a statute made in the eighth year of the reign of King *Henry* the Sixth, whereby it is declared that so much of a statute made in the second year of the reign of King *Henry* the Fifth, as is recited in the said statute of the eighth year of King *Henry* the Sixth, shall extend only to inquests to be taken between denizen and denizen; and that so much of the said statute of the twenty-eighth year of the reign of King *Edward* the Third, as is hereinbefore recited shall be put in due execution; and so much and such parts of the said several statutes as relates or relate to such inquests and proofs shall be and remain, and the same is and are hereby declared to be and remain in full force and effect; any thing in this Act contained to the contrary in anywise notwithstanding.

Saving for guaging of Liquors in London.

IX. Provided also and be it enacted, That nothing in this Act contained shall extend or be construed to extend to repeal any of the statutes or Acts or parts of statutes or Acts hereinbefore mentioned so far as the same or any of them may relate to the contents of tuns pipes tertians hogsheads or other vessels of wine oil honey and other gaugeable liquors or articles imported into the city of *London* or the liberties thereof or the gauging thereof which the mayor and commonalty and citizens of the city of *London* are by divers grants and charters of his Majesty's royal predecessors or claim to be authorised or empowered to guage within the city of *London* and the liberties thereof; nor to repeal the duty called gauge which the said mayor and commonalty and citizens are entitled or claim to have receive and enjoy by virtue of the aforesaid grants or charters or any of them; but the same shall continue and be used and exercised as if this Act had not been passed.

Certain Acts heretofore repealed, shall remain repealed, viz.
11 R. 2. c. 7.
15 R. 2. c. 8. Export of Tin.
2 H. 4. c. 6. Importing Foreign Coin, repealed by 21 J. 1. c. 28. § 11.

X. And whereas certain statutes and Acts or certain parts thereof relating to the importation and exportation of divers goods and merchandize have been heretofore repealed, and it is expedient that the same should be specified in this Act; for the more completely effecting the purposes of this Act be it therefore enacted, That the several statutes and Acts and parts thereof hereinafter mentioned and specified shall be and remain repealed; that is to say, So much of a statute made in the fourteenth year of the reign of King *Richard* the Second; as ordains that the passage of tin out of the realm shall be at the port of *Dartmouth* and no where else; and also,—So much of a statute made in the fifteenth year of the reign of the said King *Richard* the Second, as concerns the

No. I.
3 Geo. IV.
c. 41.

carriage of tin to *Calais*;---and also, So much of a statute made in the second year of the reign of King *Henry* the Fourth, as prohibits the bringing in of coin of *Flanders* or *Scotland* and other foreign coin; and which parts of the said several statutes are repealed by an Act made in the twenty-first year of the reign of King *James* the First, intituled *An Act for continuing and reviving of divers Statutes and Repeal of divers others*;---and also, So much of a statute made in the eighth year of the reign of King *Henry* the Sixth, whereby it was ordained and established, that none of the King's subjects being *Englishmen* should go or repair into any of the parts lordships or dominions of the King of *Denmark*, and which part of the said recited statute was repealed by an Act made in the first year of the reign of King *Henry* the Eighth, intituled *An Act for the repealing of a Statute for fishing in* Iceland;---and also, So much of an Act made in the third year of the reign of King *Henry* the Seventh, intituled *An Act against Merchants carrying of Goods from one Port to another without a Certificate from the Customer where the Goods were first entered*; whereby it was ordained and established, that no manner of merchant denizen nor stranger should take upon him to enter or cause to be entered in the books of any customer of any port within the same, any manner of merchandize coming into the realm or going out of the same in any other merchant's name, save only the name of the merchant owing the same, upon pain of forfeiture of all such goods and merchandizes so entered,. and which part of the said recited Act is repealed by an Act made in the first year of the reign of King *Henry* the Eighth, intituled *An Act for the true payment of the King's Customs*;---and also, an Act made in the third year of the reign of King *Henry* the Eighth, intituled *An Act concerning Hats and Caps*;---and also, an Act made in the twenty-first year of the reign of the said King *Henry* the Eighth, intituled *An Act limiting the Prices of Hats and Caps brought from beyond the Seas*;---or, *An Act limiting the Prices of Woollen Hats Bonnets and Caps made beyond the Sea and brought to be sold within this realm*;---and also, an Act made in the first year of the reign of Queen *Mary*, intituled *An Act for the Sale of Hats and Caps made beyond the Seas*;---and which said three last-mentioned Acts are repealed by an Act made in the first year of the reign of King *James* the First, intituled *An Act for continuing and reviving of divers Statutes, and for repealing of some others*;---and also, an Act made in the fifth year of the reign of the said King *Henry* the Eighth, intituled *An Act that Strangers buy no Leather but in open Market*; or, *An Act for Strangers for buying of Leather in open Market*; and which Act was repealed by an Act made in the fifth year of the reign of Queen *Elizabeth*, intituled *An Act touching Tanners Curriers Shoemakers and other Artificers occupying the cutting of Leather*;---and also, an Act made in the twenty-first year of the reign of King *Henry* the Eighth, intituled *An Act for the Linen Drapers in* London, which is repealed by an Act made in the twenty-eighth year of the reign of the said King *Henry* the Eighth, intituled *An Act repealing of the Statute lately made for the bringing in of Dowlas and Lokerams*;---and also, an Act made in the Parliament of *Ireland* in the twelfth year of the reign of King *Edward* the Fourth, intituled *An Act for bringing Bows into this Realm from the Realm of* England *by Merchants and others*, and which was repealed by an Act made in the Parliament of *Ireland* in the tenth year of the reign of King *Charles* the First for repealing the said Act of King *Edward* the Fourth;---and also, an Act made in the Parliament holden in the second and third years of the reign of King *Edward* the Sixth, intituled *An Act against the carrying of White Ashes out of this Realm*, which was repealed by an Act made in the twenty-eighth year of the reign of his late Majesty King *George* the Third, for repealing the said Act of King *Edward* the Sixth;---and also, an Act made in the first year of the reign of Queen *Elizabeth*, intituled *An Act that carrying of Leather Tallow or Raw Hides out of the Realm for Merchandize shall be Felony*; and which Act was repealed by an Act made in the eighteenth year of the reign of the said Queen *Elizabeth*, intituled *An Act against the transporting of Leather Tallow and Raw Hides out of the*

8 H. 6. c. 2. Trade to Denmark repealed by 1 H. 8. c. 1.

3 H. 7. c. 7. entering Goods in the Names of others, repealed by 1 H. 8. c. 5.

3 H. 8. c. 15. 21 H. 8. c. 9. 1 M. st. 2. c. 11. Foreign Hats and Caps, repealed by 1 J. 1. c. 25. § 7.

5 H. 8. c. 7. Foreigners buying Leather, repealed by 5 El. c. 8. § 44.

21 H. 8. c. 14. Linens imported, repealed by 28 H. 8. c. 4.

Irish Act. 12 E. 4. c. 2. Importing Bows, repealed by 10 C. 1. st. 3. c. 22.

2, 3 Edw. 6. c. 26. Exporting Ashes, repealed by 28 G. 3. c. 16.

1 El. c. 9. Exporting Leather, repealed by 18 El. c. 9.

No. I. 3 Geo. IV. c. 41.

Realm;—and also, So much of an Act made in the first year of the reign of King *James* the First, intituled *An Act concerning Tanners Curriers Shoemakers and other Artificers occupying the cutting of Leather*; whereby any penalty is imposed on officers of customs permitting the undue exportation of leather, and the whole of which Act of the first year of King *James* is repealed by an Act made in the forty-eighth year of the reign of his late Majesty King *George* the Third, made among other things for repealing the said Act of King *James* the First;—and also, The several Acts made in the fifth twenty-seventh and thirty-third years of the reign of King *Henry* the Eighth, relating to the exportation of cloths, and which Acts were repealed by an Act made in the fiftieth year of the reign of his late Majesty King *George* the Third, intituled *An Act to repeal several Acts respecting the Woollen Manufacture, and for indemnifying Persons liable to any Penalty for having acted contrary thereto*;—and also, The several Acts or parts of the statutes made in the third year of the reign of King *Edward* the Fourth, and in the first year of the reign of King *Richard* the Third, and which Acts or parts of statutes were repealed or were intended or which purport to be repealed by an Act made in the fifty-sixth year of the reign of his said late Majesty King *George* the Third, intituled *An Act to repeal Two Acts passed in the Reign of King* Edward *the Fourth and King* Richard *the Third, which prohibit the Importation of Wrought Goods and certain other Articles*;—and also, So much and such parts of the statutes made in the seventeenth twenty-seventh and thirty-eighth years of the reign of King *Edward* the Third, and in the fifth and seventeenth years of the reign of King *Richard* the Second, and in the second year of the reign of King *Henry* the Fourth, and in the second year of the reign of King *Henry* the Sixth, and in the fourth year of the reign of King *Henry* the Seventh, and in the sixth and seventh and seventh and eighth years of the reign of King *William* the Third, as relate to the exportation of gold or silver in money bullion plate vessel mass or jewel of gold or silver or molten silver or bullion, and all which are repealed by an Act made in the fifty-ninth year of the reign of his late Majesty King *George* the Third, made among other things to permit the exportation of gold and silver;—and also, an Act made in the fifth year of the reign of Queen *Elizabeth*, intituled *An Act avoiding divers Foreign Wares made by Handicraftsmen beyond the Seas*;—and also, So much of an Act made in the twelfth year of the reign of King *Charles* the Second, for a subsidy as prohibits the shipping carrying out and transporting gunpowder when the price of the same doth exceed five pounds *per* barrel, and which last-mentioned Act of Queen *Elizabeth*, and the said recited part of the said Act of King *Charles* the Second, were repealed by an Act made in the fifty-ninth year of the reign of his said late Majesty King *George* the Third, made to repeal among others several Acts prohibiting the importation of certain wrought goods and the exportation of gunpowder;—and the said several statutes and Acts and parts of statutes and Acts so repealed by the said several Acts made for repealing the same, shall accordingly be and remain and are hereby declared to be repealed, except only so far as they repeal any former Act or Acts; and all which Act or Acts so repealed shall be and remain so repealed to all intents and purposes whatsoever.

1 J. 1. c. 22. § 48. Punishing Officers permitting Exportation of Leather, repealed by 48 G. 3. c. 60. § 1.

5 H. 8. c. 3. 27 H. 8. c. 13. 33 H. 8. c. 19. Export of Woollen Manufacture repealed by 50 G. 3. c. 83.

3 E. 4. c. 4. 1 R. 3. c. 12. As to Import of Wrought Goods, repealed by 56 G. 3. c. 36.

17 E. 3. c. 1. 27 E. 3. st. 2. c. 14. 38 E. 3. st. 1. c. 2. 5 R. 2. st. 1. c. 2. 17 R. 2. c. 1. 2 H. 4. c. 5. 2 H. 6. c. 6. 4 H. 7. c. 23. 6,7 W. 3. c. 17. 7,8 W. 3. c. 19. Exporting Gold and Silver, repealed by 59 G. 3. c. 49. § 11, 12.

5 El. c. 7. as to Import of Wrought Goods.

12 C. 2. c. 4. § 11. Export of Gunpowder, both repealed by 59 G. 3. c. 73.

[No. II.] 3 Geo. IV. c. 110.—An Act to amend the Laws for the Prevention of Smuggling.—[*5th August* 1822.]

3 Geo. IV. c. 110.

WHEREAS by an Act passed in the Fifty-seventh year of the reign of his late Majesty King *George* the Third, intituled 'An Act to amend two Acts passed in the Forty-fifth year of his present Majesty, and in the last Session of Parliament, for the making more effectual Provision for the Prevention of Smuggling,' it is enacted, that it shall and may be lawful to and for any justice or justices of the peace before whom any person so arrested as therein mentioned, being a subject of

57 G. 3. c. 87.

No. II. 3 Geo. IV. c. 110.

his Majesty, and not being fit and able to serve his Majesty in his naval service, shall be carried, on the confession of any such person of any such offence as therein mentioned with which he may be charged in any information or complaint to be then and there laid or exhibited by any officer of customs or excise against him, or on proof thereof on the oath of one or more credible witness or witnesses to convict such person in such penalty respectively as therein mentioned; and every such person so convicted as aforesaid shall immediately on such conviction pay down into the hands of such officer the said penalty in which he or she shall be so convicted; and if any such person or persons so convicted shall not forthwith pay down the said penalty the said justice or justices shall and he and they is and are by the said Act respectively authorised and required by warrant under his or their hand and seal to commit the person so convicted as aforesaid to any gaol or prison or house of correction until such penalty shall be paid; and that in all cases where any person liable to be arrested under any of the Acts made for the prevention of smuggling, shall be fit and able to serve his Majesty in his naval service, and liable under the said Acts or any of them to be impressed into such service, every such person so arrested shall be taken before such justice or justices as aforesaid, and shall upon such proof as by the said Act of the Forty-fifth year aforesaid therein mentioned, or any other Act is required, be committed by such justice or justices to prison to answer such information and abide such judgment as may be thereon given against him in that behalf; and that it shall and may be lawful for the gaoler or keeper of any prison or house of correction in which such person shall be so imprisoned, or for any officer of customs or excise on the order of the commissioners of customs or excise respectively directing the prosecution to such gaoler or keeper and officer respectively to carry and convey or cause to be carried or conveyed any such person on board of any of his Majesty ships of war in order to his being impressed into his Majesty's naval service; and if such person shall at any time or times after any such commitment as aforesaid and before the expiration of five years from the time of his arrest escape or desert from or leave such custody or service he shall over and beside all punishment to which he shall be subject for such desertion be liable to be at any time or times afterwards again arrested and imprisoned or delivered over as aforesaid: And whereas it is expedient that so much of the said Act as is hereinbefore recited shall be repealed and other provisions made in lieu thereof: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That so much of the said Act of the Fifty-seventh year aforesaid as is hereinbefore recited shall be and the same is hereby repealed; and that from and after the passing of this Act it shall and may be lawful in and throughout the United Kingdom of *Great Britain* and *Ireland* to and for any justice or justices of the peace before whom any person liable to be arrested and arrested under any of the Acts made for the prevention of smuggling shall be carried on the confession of such person of the offence or offences for which he shall be so detained and with which he shall be charged in any information or complaint then and there exhibited or made by any officer of customs or excise, or any other officer or person employed for the prevention of smuggling, against him, or on proof thereof upon the oath of one or more credible witness or witnesses to convict in the forms or to the effect specified in the Schedule hereto annexed such person of such offence or offences; and every such person so convicted as aforesaid, who shall not be a seaman or seafaring man, or being such seaman or seafaring man shall not be fit and able to serve his Majesty in his naval service, shall immediately upon such conviction pay into the hands of such officer the penalty of one hundred pounds for every such offence of which he shall be so convicted as aforesaid, or in default thereof the said justice or justices shall and he and they is and are hereby respectively authorised and required by warrant under his and their hand and seal or hands and

So much of recited Act as respects the Punishment of Persons convicted, either in paying Penalties or in certain Cases ordered to serve in the Navy, repealed.

Justices before whom Offenders against the Acts for Prevention of Smuggling shall be brought, shall, on Conviction, order Punishment by Fine, Imprisonment, or Impressment, in the Manner herein-mentioned.

seals to commitsuch person so convicted as aforesaid and making such default as aforesaid to any gaol or prison or house of correction there to remain until every such penalty for every such offence of which he shall be so convicted shall be paid, such one hundred pounds to be levied and applied as the penalty hereby repealed; and if the person so convicted as aforesaid shall be a seaman or seafaring man and fit and able to serve his Majesty in his naval service and liable under the said Acts or any of them for the offence or offences of which he shall be so convicted as aforesaid to be impressed into such service, and shall not prove that he is not a subject of his Majesty, it shall and may be lawful for any such officer or person as aforesaid and he and they is and are hereby required upon such conviction of such person as aforesaid to carry or convey or cause to be carried or conveyed such person on board of any of his Majesty's ships in order to his serving his Majesty in his naval service; and if such person shall at any time or times after such conviction as aforesaid and before the expiration of five years from the time of such conviction by any means escape or desert from such custody or service respectively so as not to complete the service of five years in his Majesty's navy according to the true intent and meaning of this Act, he shall over and above all punishment to which he shall be subject for desertion be liable to be at any time or times afterwards again arrested and delivered over as aforesaid: Provided always, that if it shall be made appear to any such justice or justices that convenient arrangements cannot be at once made for carrying or conveying such seaman or seafaring man so convicted as aforesaid on board any of his Majesty's ships in order to serve his Majesty it shall and may be lawful for any such justice or justices and he or they are hereby required to commit any such seaman or seafaring man so convicted as aforesaid to any prison or gaol, there to remain in safe custody for any period not exceeding one month, in order that time may be given to make arrangements for so conveying such seamen or seafaring men on board any of his Majesty's ships as aforesaid: Provided always, that the commissioners of his Majesty's treasury or any three or more of them shall have full power and authority to remit or mitigate any such penalty punishment or service as aforesaid, whether the parties shall be seafaring men or otherwise; provided that no justice or justices shall accept or receive any bail for any person liable to be arrested and arrested as aforesaid; any thing in this or any other Act or Acts to the contrary thereof notwithstanding.

Treasury may mitigate Punishment.

II. And whereas by an Act passed in the twenty-fourth year of his said late Majesty's reign, intituled 'An Act for the more effectual Prevention of Smuggling in this Kingdom,' a penalty of five hundred pounds is imposed on the master or other person having charge of any *British* ship or vessel not being in the service of his Majesty's navy or his Majesty's revenue of the customs or excise who shall carry or hoist any pendant or ensign as therein mentioned: And whereas his late Majesty by his royal proclamation bearing date the first day of *January* one thousand eight hundred and one, was pleased with the advice of his privy council to order and appoint what ensign or colours should be borne at sea by merchant ships or vessels belonging to any of his Majesty's subjects of the United Kingdom of *Great Britain* and *Ireland* and of the dominions thereunto belonging, thereby charging and commanding all his Majesty's subjects whatsoever that they should not presume to wear in any of their ships or vessels his Majesty's jack, commonly called the union jack, nor any pendants nor any such colours as are usually worn by his Majesty's ships, without particular warrant for their so doing from his Majesty or his high admiral of *Great Britain* or the commissioners for executing the office of high admiral for the time being, and also commanding his Majesty's subjects that without such warrant as aforesaid they should presume not to wear on board their ships or vessels any flags jacks pendants or colours made in imitation of or resembling those of his Majesty or any kind of pendant whatsoever or any other ensign than the ensign described in the margin of the said proclamation: And whereas it is expedient that all doubts that may have been entertained as

Penalty on Persons hoisting on board any Vessel any Colours or Flags used in the Navy. 500*l.*, &c. 24 G. 3. c. 47.

No. II. 3 Geo. IV. c. 110.

to the law on this subject should be removed and that provision should be made for carrying the said proclamation into effect; Be it therefore enacted and declared, That from and after the passing of this Act it shall not be lawful for any of his Majesty's subjects whomsoever to hoist carry or wear in or on board any ship vessel or fishing boat or any other vessel or boat whatever whether merchant or otherwise belonging to any of his Majesty's subjects his Majesty's jack, commonly called the union jack, or any pendant or any such colours as are usually worn by his Majesty's ships, or any flag jack pendant or colours whatever made in imitation of or resembling those of his Majesty, or any kind of pendant whatsoever, or any ensign or colours whatever, other than those prescribed by the said proclamation; and that if any person or persons shall nevertheless presume to hoist carry or wear in or on board any ship or vessel fishing boat or other vessel or boat whatever belonging to any of his Majesty's subjects whether the same be merchant or otherwise his Majesty's jack, commonly called the union jack, or any pendant or colours such as are commonly worn by his Majesty's ships, or any jack flag pendant or colours whatever made in imitation of or resembling those of his Majesty, or any kind of pendant whatever without such warrant as aforesaid, or any other ensign or colours than the ensign or colours prescribed by the said proclamation to be worn, then and in every such case the master or other person having charge of such ship vessel or boat or the owner or owners thereof being on board the same and every other person so offending shall for every such offence forfeit and pay the sum of five hundred pounds to be recovered with costs of suit either in the High Court of Admiralty or in any of his Majesty's Courts of King's Bench or Exchequer at *Westminster* or *Dublin* or in the Courts of Session or Exchequer in *Scotland* respectively; and that it shall be lawful for any officer of his Majesty's navy customs or excise to enter on board any ship vessel or boat so hoisting wearing or carrying any jack flag ensign pendant or colours prohibited by the said proclamation and by this Act to be hoisted worn or carried and to seize and take away the same; and the same shall thereupon become forfeited.

Seizures of Spirits and other Goods together with the Vessels, &c. to be delivered over to the Commissioners of Customs for Condemnation. 45 G. 3. c. 121. 47 G. 3 st. 2. c. 66;

III. And whereas it is expedient that all seizures of spirits and other goods made by officers of the customs or by persons acting under the orders or directions of the commissioners of his Majesty's customs should be delivered into the custody of the persons authorised by the said commissioners to receive the same in order to their prosecution and condemnation by the said commissioners, agreeably to the provisions and directions of two Acts of Parliament passed in the forty-fifth and forty-seventh years of the reign of his said late Majesty for the more effectual prevention of smuggling; Be it therefore enacted, That every seizure made by any officer or officers of his Majesty's customs or person or persons acting under the orders or directions of the said commissioners shall together with the ships and other vessels carts and other carriages horses and other cattle seized therewith or on account thereof to be delivered over to and lodged and secured under the provisions of the said Acts made in the forty-fifth and forty-seventh years of the reign of his said late Majesty, and be disposed of or prosecuted for condemnation by order and under the directions of the said commissioners of customs; and that such commissioners shall and are hereby authorised to direct and pay all rewards for the making of every such seizure, and of all costs and expenses relating thereto, in the manner directed by the several laws in force for the prevention of smuggling.

Who may direct the Payment of Rewards for such Seizures.

SCHEDULE to which this Act refers.

FORM of Conviction to be used in the Case of a Smuggler not a Seaman or Seafaring Man, or not fit to serve in the Navy.

County of [*or as the Case may be*] to wit. } BE it remembered, That on the day of in the year of our Lord one thousand eight hundred and at in the county of A. B. [*the name of the smuggler*] hath been duly convicted before me [*name of justice*] one [*or,*

before us and two] of his Majesty's justices of the peace in and for the county of [*or*, for the riding division city liberty town or borough of *as the case may be*] of [*here state the offence*] by him the said *A. B.* committed against the provisions of the Acts of Parliament made and passed for the prevention of smuggling, which offence hath been duly proved before me [*or* us] on the oath of one or more credible witnesses; and I [*or* we] do therefore adjudge that the said *A. B.* hath for such offence forfeited the sum of pursuant to the Act passed in the third year of King George the Fourth [*here state the title of the present Act*]. Given under my hand and seal [*or* our hands and seals] at in the county of the day of in the year of the reign of his present Majesty King and in the year of our Lord one thousand eight hundred and

FORM of Conviction to be used in the Case of a Smuggler being a Seaman or Seafaring Man, and fit and able to serve in the Navy.

County of [*or as the case may be*] to wit. } BE it remembered, That on the day of in the year of our Lord one thousand eight hundred and *A. B.* [*the name of the smuggler*] hath been duly convicted before me one [*or*, before us and two] of his Majesty's justices of the peace in and for the county of [*or*, for the riding division city liberty town or borough of *as the case may be*] of [*here state the offence*] by him the said *A. B.* committed against the provisions of the Acts of Parliament made and passed for the prevention of smuggling; which offence hath been duly proved before me [*or* us] on the oath of one or more credible witnesses; and the said *A. B.* being a seafaring man and fit and able to serve his Majesty in his navy, I [*or* we] do hereby adjudge the said *A. B.* to serve in his Majesty's naval service, pursuant to the Act passed in the third year of King George the Fourth, intituled [*here state the title of this Act*]. Given under my hand and seal [*or* our hands and seals] at in the county of the day of in the year of the reign of his present Majesty King and in the year of our Lord one thousand eight hundred and

ADDENDA

TO

PART III. CLASS IV.

Bills of Exchange and Promissory Notes.

[No. I.] 3 George IV. c. 70.—An Act to continue, until the Fifth Day of *January* One Thousand Eight Hundred and Thirty-three, an Act of the Thirty-seventh Year of His late Majesty, for suspending the Operation of an Act of the Seventeenth Year of His late Majesty, for restraining the Negociation of Promissory Notes and Bills of Exchange, under a limited Sum in *England*.—[22*d July* 1822.]

Geo. IV. c. 70.

17 G. 3. c. 30.

27 G. 3. c. 16.

37 G. 3. c. 32.

WHEREAS an Act was passed in the seventeenth year of the reign of his late Majesty King *George* the Third, for restraining for a limited time the negociation of promissory notes and inland bills of exchange for twenty shillings or any sum of money above that sum and under five pounds: And whereas the said Act was by an Act passed in the twenty-seventh year of the reign of his said late Majesty made perpetual: And whereas by an Act passed in the thirty-seventh year of the reign of his said late Majesty, the said first recited Act so far as the same relates to the making void of promissory notes drafts or undertakings in writing payable on demand to the bearer thereof for any sum less than the sum of five pounds in the whole, and also to the restraining the publishing or uttering and negociating of any such notes drafts or undertakings as aforesaid was suspended until the first day of *May* then next: And whereas the said Act of the thirty-seventh year of the reign of his late Majesty hath by several subsequent Acts been continued and is now in force until two years after the expiration of the restriction upon payments in cash by the bank of *England*; and it is expedient that the same should be further continued; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That the said Act of the thirty-seventh year of the reign of his late Majesty, so far as the same suspends the said Act of the seventeenth year of the reign of his late Majesty shall be further continued until the fifth day of *January* one thousand eight hundred and thirty-three.

Recited Act of 37 G. 3. c. 32. so far as suspends the recited Act of 17 G. 3. c. 30, continued.

ADDENDA

TO

PART III.. CLASS V.

Usury.

[No. I.] 3 Geo. IV. c. 47.—An Act to repeal an Act of His present Majesty, for explaining an Act made in the Twelfth Year of Queen *Anne*, to reduce the Rate of Interest without Prejudice to Parliamentary Securities, and to substitute other Provisions in lieu thereof.—[*24th June* 1822.]

3 Geo. IV. c. 47.

1 & 2 Geo. 4. c. 51.

WHEREAS it is expedient that an Act passed in the first and second years of the reign of his present Majesty, intituled 'An Act to explain an Act made in the Fourteenth Year of his late Majesty King *George* the Third, for explaining an Act made in the Twelfth Year of Queen *Anne*, intituled "An Act to reduce the Rate of Interest without Prejudice to Parliamentary Securities," should be repealed and other provisions substituted in lieu thereof:' May it therefore please your Majesty that it may be enacted; and Be it enacted by the King's most excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said recited Act shall be and the same is hereby repealed; save and except so far as regards any mortgages or securities which have been executed before the passing of this Act.

Recited Act repealed.

Declaring valid Mortgages, Demises, or other Assurances, &c. executed in Great Britain concerning Property in Ireland or in the West Indies; and no Person in Great Britain shall be liable to the Penalties of 12 An. c. 16. provided the Rate of Interest does not exceed that allowed by the Law of the Country where the Property lies.

II. And be it further declared and enacted, That all mortgages and securities which by any of his Majesty's subjects already have been or hereafter the passing of this Act shall be made and executed in *Great Britain*, of or concerning any lands tenements or hereditaments slaves cattle or other things lying and being in *Ireland*, or in any of his Majesty's colonies plantations or dominions in the *West Indies*, or any estate or interest therein, to any of his Majesty's subjects for securing the repayment of the sums of money thereon respectively really and *bonâ fide* advanced and lent, with interest for the same, whether payable in *Great Britain* or in the country island plantation or place where the lands tenements hereditaments slaves cattle or other things mentioned and comprised in any such mortgage or security severally lie or are; and also all conveyances demises or other assurances of any lands tenements hereditaments slaves cattle or other things lying and being in *Ireland*, or in any of his Majesty's colonies plantations or dominions in the *West Indies*, or any estate or interest therein; and all bonds and covenants which have been or which after the passing of this Act shall be respectively made executed or entered into in *Great Britain*, to or with any of his Majesty's subjects, either by the person or persons borrowing such sum or sums of money, or by any other person or persons residing in *Great Britain* or elsewhere, whether such conveyances demises or other assurances bonds and covenants shall be respectively made executed or entered into by way of collateral security for the payment of such interest, or for securing the payment of interest on the sum or sums of money so really and *bonâ fide* advanced and lent, at any higher rate than the rate of interest which such mortgages or other securities respectively actually bear or carry or shall bear or carry or for securing any additional

No. I. 3 Geo. IV. c. 47.

interest over and above the interest which such mortgages or other securities respectively actually bear or carry or shall bear or carry; and whether such collateral or other securities for such interest or higher rate of interest or additional interest in any of the cases aforesaid, have been or shall be respectively made executed or entered into at the time or respective times of making and executing such mortgages and other securities, for the sum or sums of money so really and *bonâ fide* advanced and lent, or at any time or times subsequent thereto; and whether the same have been or shall be respectively made executed or entered into to or with the person or persons to whom such mortgages and securities have been or shall be originally made, or his her or their representatives or trustees, or to any person or persons to whom any transfers or assignments of any such mortgages or other securities have been or shall be made, or his her or their representatives or trustees; and all transfers and assignments which have been or which after the passing of this Act shall be made and executed in *Great Britain*, of such mortgages securities conveyances demises or other assurances bonds or covenants respectively as aforesaid, to any of his Majesty's subjects, shall be as good valid and effectual to all intents and purposes whatsoever, as such mortgages securities conveyances demises or other assurances bonds covenants transfers or assignments respectively would have been if the same had been respectively made executed or entered into, and the interest secured thereby respectively had been made payable, and the person or persons making executing or entering into such conveyances demises or other assurances bonds or covenants respectively for securing such interest or higher or additional interest as aforesaid, had resided in the country island plantation or place where the lands tenements hereditaments slaves cattle or other things mentioned and comprised in any such mortgage security conveyance demise or other assurance transfer or assignment as aforesaid severally lie or are; and that none of his Majesty's subjects in *Great Britain* shall be subject or liable to any of the penalties or forfeitures in the said Act made in the twelfth year of the reign of her late Majesty Queen *Anne*, by receiving or taking or having received or taken interest for the sum or sums of money really and *bonâ fide* advanced or lent, or to be advanced or lent on any such mortgage security conveyance demise or other assurance bond covenant transfer or assignment as aforesaid; so as the total amount of the interest so to be received or taken do not exceed the rate of interest allowed by the law of the country island plantation or place where the lands tenements hereditaments slaves cattle or other things comprised in any such mortgage security conveyance demise or other assurance transfer or assignment severally lie or are; the aforesaid Act made in the twelfth year of the reign of her late Majesty Queen *Anne*, or any other law or statute to the contrary notwithstanding.

ADDENDA

TO

PART III. CLASS VI.

Annuities.

[No. I.] 3 Geo. IV. c. 92.—An Act to explain an Act of the Fifty-third Year of the Reign of His late Majesty, respecting the Enrolment of Memorials of Grants of Annuities.—[29*th July* 1822.]

3 G. IV. c. 92. 53 G. 3. c. 141.

WHEREAS by an Act of Parliament made and passed in the fifty-third year of the reign of His late Majesty King *George* the Third, intituled 'An Act to repeal an Act of the Seventeenth Year of the Reign

No. I.
3 Geo. IV.
c. 92.

of His present Majesty, intituled] "An Act for registering the Grants of Life Annuities, and for the better Protection of Infants against such Grants," and to substitute other Provisions in lieu thereof," it is enacted, That within thirty days after the execution of every deed bond instrument or other assurance, whereby any annuity or rent charge shall from and after the passing of the said Act be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, a memorial of the date of every such deed bond instrument or other assurance of the names of all the parties and of all the witnesses thereto and of the person or persons for whose life or lives such annuity or rent charge shall be granted, and of the person or persons by whom the same is to be beneficially received, shall be enrolled in the High Court of Chancery, in the form or to the effect following, with such alterations therein as the nature and circumstances of any particular case may reasonably require: And whereas the form or effect to which such enactment refers is expressed in several columns, at the head of one of which are the words "names of witnesses," and underneath as applicable to indentures of lease and release the letters and words "E. F. of" "G. H. of" and as applicable to a bond and warrant of attorney to confess judgment, the letters "E. F." "G. H." without the word "of:" And whereas the words of enactment referring to such form express only that a memorial of the names of all the witnesses to every such deed bond instrument or other assurance as therein mentioned, should be enrolled as directed by the said Act, without providing that any description of the witnesses should be given in such memorial except as such form is thereby referred to; and such form does not provide that any description should be added to such names except by the addition of the word "*of*" to the letters "E. F." and "G. H." as aforesaid, as applicable to indentures of lease and release: And whereas in consequence of such indistinct enactment it may be doubtful whether it was the intention of the legislature to require any, or if any, what description to be added to the names of witnesses in the memorial of any deed instrument or assurance to be enrolled as aforesaid: And whereas a very great number of memorials of grants of annuities have since the passing of the said Act been enrolled, in which the names of the witnesses to the deeds instruments or assurances specified in such memorials have been inserted without the addition of the place of abode of such witnesses; and it has been inferred from the use of the word "of" after such letters "E. F." and after such letters "G. H." as aforesaid, that it was necessary to describe each of such witnesses in such memorial as of some place, and in consequence thereof some grants of annuities made since the passing of the said Act have been in proceedings in summary applications to courts of justice, which cannot be reviewed in any superior court, deemed null and void, on the ground that no description of the place of abode of the witnesses to some or one of the deeds instruments or assurances by which such grants of annuities have been made, had been inserted in the memorials or memorial thereof enrolled as directed by the said Act: And whereas doubts have been entertained whether the construction so put on the said Act is the true construction thereof, more especially as the same is so far penal as it renders deeds instruments and assurances of which memorials have not been enrolled in pursuance of the said Act, null and void, and the provisions in the said Act are not so clear and explicit as the same ought to have been under such circumstances, and the parties claiming under grants of annuities may have been thereby misled, and induced to conceive that it was not necessary under the provisions of the said Act to insert in the memorial of any deed instrument or assurance to be enrolled as aforesaid, the place or places of abode of the witness or witnesses to such deed instrument or assurance or any more than the name or names of such witness or witnesses, there being no words in the said Act expressly requiring any more to be so inserted, nor any words from which it could be inferred that any more was required to be so inserted, except the word "of" after the letters "E. F." and "G. H." respectively, with

No. IV
3 Geo. IV.
c. 92.

reference to one species of assurance inserted in the form of memorial before mentioned; and it is expedient to remove all doubts touching the construction of the said Act, with respect to so much of the memorials required by the said Act to be enrolled as relates to any description of the witness or witnesses to any deed instrument or assurance? May it therefore please your Majesty that it may be enacted and declared; and Be it enacted and declared by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That by the said Act of the fifty-third year of the reign of His said late Majesty, no further or other description of the subscribing witness or witnesses to any deed bond instrument or other assurance whereby any annuity or rent charge is or may be granted, is required in the memorial thereof, besides the names of all such witnesses; and so the said Act shall be deemed construed and taken.

No further Description of Witnesses is necessary in the Memorial of Annuities than the Names of such Witnesses.

II. And whereas doubts have also arisen whether under the said Act of the fifty-third year of the reign of His said late Majesty, the omission to enrol a memorial of any one of the assurances for securing any annuity or rent charge does not vitiate the whole transaction, notwithstanding the enrolment of a memorial of another deed bond instrument or other assurance granting the same; and it is also expedient to remove such doubts: Be it therefore further enacted and declared, That every deed bond instrument or other assurance granting any annuity or rent charge, and of which a memorial shall have been or shall be duly enrolled pursuant to the said Act, notwithstanding the omission to enrol any other deed bond instrument or assurance for securing such annuity or rent charge, shall be valid and effectual according to the intent meaning and true effect thereof, notwithstanding a memorial of any other deed bond instrument or assurance for securing the same annuity shall not have been duly enrolled pursuant to the said Act.

Deed granting Annuity, a Memorial of which having been enrolled, shall be valid, notwithstanding the Omission of enrolling any other Deed for securing such Annuity.

III. Provided always, and be it further enacted, That nothing herein contained shall extend to give any other force or validity to any deed, bond instrument or other assurance of which a memorial shall have been duly enrolled as aforesaid, than such deed bond instrument or other assurance would have had if any deed bond instrument or other assurance for securing the same annuity of which a memorial shall not have been duly enrolled, had never been executed.

Act not to give any additional Validity to any Deed.

IV. Provided always, and be it further enacted, That this Act shall not extend or be construed to extend to revive or give effect to any deed bond instrument or other assurance whereby any annuity or rent charge hath been already granted, so far as the same hath been adjudged declared treated or deemed void by any judgment decree action suit or proceeding at law or in equity, or by any acts or deeds of the parties thereto, or by any other legal or equitable means whatsoever; nor shall this Act affect or prejudice any suit or proceeding at law or in equity, commenced on or before the thirty-first day of *May* one thousand eight hundred and twenty-two, and now depending upon the ground of an alledged defect in the memorial thereof, in not describing the witnesses thereto otherwise than by his her or their name or names for avoiding any such deed bond instrument or other assurance.

Act not to give Effect to any Deed declared void, or affect any Proceedings at Law.

END OF VOL. II.

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